

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
JANUARY 26, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, January 26, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Vice Chair, Cyndy Hayworth, Patti Eckard, Frank Forde, Jeff Nimmer, Mark Cummings and Adam Marshall. Planning Department staff were: Loray Averett, Nicole Smith and Ron Fields, Code Enforcement Officer; and Jennifer Schnierer, City Attorney's Office.

Vice Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Vice Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Ms. Eckard moved approval of the December minutes, as submitted, seconded by Mr. Forde. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett and Nicole Smith of the Planning Department and Ron Fields, Zoning Enforcement Officer were sworn or affirmed for their testimony during the proceedings.

**CONTINUANCES/WITHDRAWALS**

Vice Chair Hayworth asked if there were any continuances or withdrawals to be considered. Loray Averett stated that the applicant for BOA-14-38, 7806 Boeing Drive has withdrawn their item from the agenda. BOA Case-15-01, 2130 New Garden Road, Suite A, the applicants are present and may wish to ask for a continuance.

**APPEAL OF NOTICE OF FIRST INCIDENT**

- (a) BOA-14-38: **7806 BOEING DRIVE** Richard Greene, Attorney for JMB Golf and Travel, Inc. d.b.a. Treasure Club appeals the decision of a Notice of First Incident for a sexually oriented business which is regulated by the Entertainment Facility Use Ordinance. This case was continued from the December 15, 2014 meeting. Land Development Ordinance Section 30-8-13, Present Zoning-C-M (Commercial Medium), Cross Street-South Regional Road. **(WITHDRAWN)**

**NEW BUSINESS**

## VARIANCE

- (a) BOA-15-01: **2130 NEW GARDEN ROAD, Suite A** Paul Jolin requests a variance from the minimum spacing requirement that a bar establishment located on a tract less than 5 acres must maintain from residentially zoned property. **Variance:** The proposed bar establishment will be zero feet from the nearest residentially zoned property, when no such establishment may be located within two hundred feet of residentially zoned property. Section 30-8-10.4(F), Present Zoning-CD-C-M (Conditional District-Commercial-Medium), Cross Street- Battleground Avenue. **(CONTINUED TO FEBRUARY MEETING)**

Loray Averett disclosed that she has had a conversation with the applicants about their right to continue the matter due to the number of Board members present.

Vice Chair Hayworth asked the representative to come forward to make a statement about their decision to either hear the case this evening or ask that it be continued.

Kevin Duhaime, 3823 Brandt Lake Court, stated that they would like to go ahead and proceed with the hearing tonight since there were six members present.

Speakers were sworn in for their testimony in this matter.

Loray Averett stated that the applicant requests a variance from the minimum spacing requirement that a bar establishment located on a tract less than 5 acres must maintain from residentially zoned property. The proposed bar establishment will be located on property that is zero feet from the nearest residentially zoned property, when no such establishment may be located within 200 feet of residentially zoned property; Thus the applicant is requesting a variance for zero separation from the residentially zoned property which is located south of the subject site. The property is located on the south side of New Garden Road - west of Battleground Avenue. It is zoned CD-C-M (Conditional District-Commercial-Medium). The zoning conditions do not prohibit the use of a bar on the property. The property functions as a shopping center with various retail and personal use services. The Guilford County tax record indicates the property consists of 2.45 acres. Tax records reflect the shopping center was constructed in 1998. The applicant is proposing to lease the most western unit of the building addressed as Suite A of the building. A bar that is located on tracts less than 5 acres is required to meet specific ordinance standards. The property containing the proposed bar use is required to be 200 feet from residentially zoned property. As the records reflect, there is a portion of residential property adjacent to this commercial property. The residential property is located south of the subject site. There is also a portion of Office zoning property south of the subject site as well. The spacing requirement is measured from the property line to the property line. The subject site has driveway accesses from New Garden Road. The parking spaces are located in front of and around the building on all sides. There are minimal parking spaces along the area that abuts the residential zoning. Only about five of the spaces will be within 30 feet of the residentially zoned property. If the variance is granted, the owner will have to comply with the additional standards concerning frontage, screening and parking as noted in the development standards. Exhibit 6 shows there are two residential tracts south of the subject site.

The nearest tract is addressed as 3521 Battleground Avenue, contains approximately 5.21 acres and is zoned R-3. The tract adjacent to this parcel is addressed as 2210 Tennyson Drive, contains approximately 5.0 acres and is also zoned R-3. Guilford County tax records reflect that both of these tracts are under the same ownership. Both properties have residential dwellings located on them. Staff's Exhibit #5 shows the parking layout on the site. On the subject site, there are approximately 2 parking spaces located north and 3 spaces located west of the residential zoning that will be within 30 feet of the residential zoning. Exhibit B contains information submitted from the applicant concerning his business plan for the subject site. The C-M, Commercial-Medium District: Primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks.

Vice Chair Hayworth asked for speakers in favor of the request to come forward and give their presentation.

Kevin DuHaime was sworn in and stated that the vacant property belongs to the person that is going to lease the area to them and is fully aware of the use of the property. He has spoken to the owner of the residential property to the rear and he is also aware of the intended use of the property and is not opposed to their plans. A notarized letter to this effect was submitted for review. Mr. Duhaime also submitted information concerning the residential property. The owner of that property does currently live on the property. The proposed use of the property is for a beer tasting facility with hours from 1:00 p.m. until about 10:00 p.m. and 11:00 p.m. on the weekends. There will only be beer and wine so no liquor or food will be served. Customers may bring in food from other facilities and visit the facility to taste the different beers that will be offered and possibly play games in the game room. There will also be a refrigerated area where customers may choose different kinds of beer to purchase. They hope that this will increase business to some of the other businesses in the area. This will be more of a relaxed atmosphere for people to come together for fellowship. A business plan for the proposed business was also submitted for review.

Paul Jolin, 8315 Morittsite Drive, Stokesdale, NC, the applicant, was sworn in and pointed out that customers can get a flight of several different kinds of beers and see which they like. There is also an area of 4-pack and 6-packs of the craft beer for carry-out purchase. This facility is similar to wine Styles located at Friendly Shopping Center where people can either purchase wine and go, or they can taste different kinds of wines. There also is music from time to time at the facility at Friendly.

For the proposed facility on New Garden Road, they hope to be able to offer that same type of atmosphere with an outside patio so that customers can enjoy the outdoors while tasting the different beers they offer. They do not plan to stay open until 2:00 a.m., as most bars do.

Mr. Nimmer asked if a membership would be required for people visiting the facility. Mr. DuHaime stated that no membership would be offered or required. Anyone could come into the business.

In response to questions by Mr. Cummings, the applicants stated that they looked at many different areas and this area, geographically, seems to be a great place for this type of business. There is good visibility and the building would not need a lot of demolition to refurbish it inside for their use. There will be some televisions and also some kind of audio system to play music. This facility will not be like a normal sports bar. The residential properties behind the proposed location are owned by one owner. This owner has speculated that in the future that residential property will become commercial property, but there is no time line on that now. That property owner has not asked for rezoning on this property

Loray Averett stated that the Planning staff has not received any rezoning request on the R-3 property. She stated that the pattern there would suggest that some day the R-3 is likely to change to something that is non-residential.

Counsel Schnierer stated that the most likely transition of this property from a residential perspective to non-residential would be initiated by the property owner. The City has no plans to initiate a rezoning of this area and, to her knowledge, there is not another party that would be interested in transitioning from residential to non-residential, at this point in time.

Ron Purdue, 5702 Country Lane, was sworn in and stated that in talking with the residential property owner, he is currently under contract with someone on the commercial side of looking at that property. Grant and Mark Robertson own the strip shopping center where the applicants plan to start their business which will be leased from them.

In response to Ms. Eckard who had questions about frontage, screening and parking issues. Mr. Purdue stated that they would take responsibility for that.

There being no speakers in opposition to the request, the public hearing was closed.

### **Discussion:**

Mr. Marshall stated that he would support the request as he feels it is a good and well thought out plan, as well as the hours are so it will not be a problem for neighbors, and the fact that the resident that is there has blessed it. Mr. Forde stated that since the neighbors do not have a problem with it, he also has no problem with it. He does not feel that the property to the rear will be residential for very long. Ms. Eckard stated that she also feels that the residential property will change to non-residential in the future, so she would support the request. Mr. Nimmer stated that sometimes the ordinance definitions do not fit with a request and he feels this is not really going to be a bar, it will be more of a retail shop and he would support it. Mr. Cummings stated that he is opposed to the request because he is hard pressed to find how there is a hardship because the ordinance states, "complain resulting from the conditions that are peculiar to the property", and each of the existing properties there fit in the definition for this particular piece of property. He has asked what would it take for the owner of the residential area that is causing this requirement, to ask for a rezoning of the property. It seems to him that it would just take more time and more effort and probably more money to go that route, but he just does not see how this property or the hardship is something that is not germane to everything that is already there. Because of that, he will not vote to support the request. Ms. Hayworth stated that she would support the request and asked for a motion.

Mr. Forde moved that in regard to BOA-15-01, 2130 New Garden Road, that the findings of fact be incorporated, the Zoning Enforcement Officer be overruled, and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying the strict application of the ordinance, because several legal allowable uses would be prohibited in the shopping center. The hardship of which the applicant complains results from conditions that are peculiar to the property and the unique circumstances related to the applicant's property because the large residentially zoned lot which adjoins the property has only one home, which home is located outside the separation requirement, but the lot line for that home is located within the separation requirement. The hardship results from the application of this ordinance to the property because the location of the aforementioned residentially zoned property is within the separation requirement, while the resident itself is outside the separation requirement. The hardship is not the result of the applicant's own actions because the residentially zoned property existed prior to the construction of the shopping center. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows for a legally allowable use to be realized in the shopping center with virtually no effect on the adjoining residentially zoned property. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the shopping center to be operated at its highest and best use with minimal or no effect on the surrounding residentially zoned property, seconded by Ms. Eckard. The Board voted 4-3 and the motion failed. (Ayes: Hayworth, Forde, Marshall, Eckard and Nimmer. Nays: (Cummings, Absent Member.)

In response to questions from Board members asking why the motion failed, Counsel Schnierer stated that this vote consisted of a negative vote for those members not in attendance. Loray Averett explained that there is a seven member Board and it must be four-fifths of the seven members. When a member is absent, unless disqualified, that member's vote also counts and falls to the negative.

Mr. Forde asked that this matter be re-opened as he did not realize that members not present at the hearing would be considered a negative vote. He asked that the matter be re-addressed so that Board members could have a re-vote on the issue and possibly continue the matter.

Mr. Forde stated that based on the fact that not all members are present, and he asked that the majority of the members who voted in favor of the request, re-vote now to re-open the vote, seconded by Ms. Eckard.

Mr. Cummings stated that he was confused and he wished to make sure he understands the process. He did not know that his negative vote was going to affect it like it did, but he still feels the same way. The applicant was given the opportunity to continue because of the number of Board members present and the applicant refused that opportunity. Ms. Eckard feels that there was confusion among the Board member, in general, and they may not have known that the absent members would have a negative vote on this matter.

Loray Averett stated that General Statute 160A-388 governs how the Board Members votes are calculated based on a 4/5 requirement of its members. She stated she had a conversation earlier today with the applicants about the number of members, the members that would be present and how the vote would be calculated. It is possible there wasn't enough clarity concerning the voting requirements.

Vice Chair Hayworth asked if there was a motion to re-open the public hearing.

Mr. Cummings had concerns about re-opening a public hearing after a vote was taken and stated that he would like to see that particular rule in the City Ordinance. Counsel Schrierer stated that it is legal and she would e-mail this information to Mr. Cummings.

Mr. Forde stated that he feels sure that if the applicant had been aware that the absent members would be voting in the negative, they would have certainly asked for the matter to be continued. He pointed out that the statute asks for a unanimous decision by all the Board members and that is a hurdle that no one should have to overcome.

Vice Chair Hayworth asked for a vote to re-open the public hearing. Mr. Forde moved to re-open the public hearing, seconded by Ms. Eckard. The Board voted 6-1 and the public hearing was re-opened. (Ayes: Hayworth, Forde, Marshall, Eckard, Cummings and Nimmer. Nays: (Absent Member.)

The public hearing was re-opened and Mr. Cummings stated that he feels the applicant have a fantastic idea and feels that part of the City will be well served by it. It just seems to him that the purpose of this Board is not to make it financially easy for a business to progress when there is no historical reason or something that is inherent in the property itself that disqualifies that particular idea from manifesting itself. If it were something where no business could be there, even if it was intended for business use, to him, that would seem appropriate, but where it is just saving time and money, because his questions were if the owner could apply to the City to rezone this property and the answer was, yes. That seems to be more appropriate, to him.

Mr. Forde stated that the applicant should not have to ask the property owner to rezone his property for his own convenience as that would be unfair to the property owner. He also feels the Board of Adjustment should be able to grant a variance, which would accomplish the same thing. He pointed out that the property that is currently residential certainly will not remain residential for very long and at some point the current application for a variance would not be necessary.

Kevin Dehaimé stated that they have worked very hard to get this business on its feet. Under the circumstances and because they did not realize that there would be absent members with a negative vote, he would request a continuance to the February meeting.

Ms. Eckard moved that this matter be continued to the February meeting, seconded by Mr. Forde. The Board voted 5-2 in favor of the motion. (Ayes: Hayworth, Marshall, Forde, Eckard, Hayworth. Nays: Cummings and Absent Member.)

This matter will be heard at the February 23, 2015 meeting.

## SPECIAL EXCEPTION

- (a) BOA-15-02: **920 WEST VANDALIA ROAD** Maria E. Bailey requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a family care home separation encroachment from the current one-half mile development spacing standard. **Special Exception Request:** A proposed family care home will be 1,982 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2006 Old Jones Road when 2,640 feet is required. Present Zoning-R-5 (Residential Single-family), Cross Street-Rehobeth Church Road. **(GRANTED)**

Nicole Smith stated that the applicant is proposing to locate a family care home which is too close to an existing family care home. It will be 1,982 feet from a family care home (6 or less persons) at 2006 Old Jones Road, when 2,640 feet is required. The lot is located on the north side of West Vandalia Road and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at this location and it is too close to an existing family care home located at 2006 Old Jones Road. The separation requirement is 2,640 feet. This proposed home will be 1,982 feet from the existing home at 2006 Old Jones Road. Privilege license records reflect the family care home at 2006 Old Jones Road is operational and required renewals are in compliance. The proposed family care home location is located south of the existing family care home. Exhibit 2 shows they are separated by a major thoroughfare (Business 85), various residential streets and neighborhoods. The R-5, Residential Single-family District is primarily intended to accommodate low density single family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Maria E. Bailey, 2602 McConnell Road, was sworn in and stated that she owns a 6-bedroom home and all of her children are now grown and out on their own. She would like to offer her home as a family care home. She has already started taking classes to obtain her permits and licensing to enable her to open this family care facility. She took care of her mother and father until their passing in 2002 and 2005, so she is used to this kind of work. She has also adopted children and she has raised 11 children.

Eleanor Ward, 929 W. Vandalia Road, stated that she lives across the street and is not opposed to Ms. Bailey's plan for the family care home. She knows that she has several children of her own and is now lonely in the big house without them there. She feels this type of home would work very well in the neighborhood.

There being no one to speak in opposition to the request, the public hearing was closed.

Discussion:

Mr. Forde stated that the Board must find that a reduced separation will not promote the clustering of homes which could lead to resident persons to cloister themselves and not interact with other members of the community. He does not understand the rationale of this idea that those residents would cloister themselves and not interact with the community. He pointed out that the applicant's house is 1,800 feet from another group home and anyone would also have to cross business I-85 and he cannot imagine the residents of this home crossing that highway. He would support the request. Several of the decisions to be made are not up to the Board to decide, such as licensing, the type of residents, et cetera. He urged the other Board members to also support the request.

Mr. Forde moved that in BOA-15-02, 920 West Vandalia Road that the findings of fact be incorporated, the Zoning Enforcement Officer be overruled and the Special Exception granted based on the following: a Special Exception may be granted by the Board if evidence presented by the applicant persuades it to reach the following conclusions: the Special Exception is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it allows the spirit of the ordinance to be complied with because the homes will not be clustered nor the residents to cloister themselves. The granting of the Special Exception assures the public safety and welfare and does substantial justice because it allows the applicant to use the property for the good of the community and preserves the spirit of the ordinance, seconded by Mr. Marshall. The Board voted 6-1 in favor of the motion. (Ayes: Hayworth, Marshall, Forde, Eckard, Nimmer and Cummings. Nays: Absent Member.)

### **APPEAL OF A NOTICE OF VIOLATION**

- (a) BOA-15-03: **2602 MCCONNELL ROAD** Michael Crowe, Attorney At Law, on behalf of Kim Nguyen, owner of the Mini Market, appeals a Notice of Violation concerning the placement of barbed wire on fences located on this property. Section 30-9-4.5(D), Present zoning R-5 (Residential Single-family), Cross Street-South English Street. **(CONTINUED TO FEBRUARY MEETING)**

Michael Crowe, attorney representing the applicant, was sworn in and stated that he wished to continue this case based on the fact that he was unaware of the requirement of the number of Board members in regard to the voting. He pointed out that in Section 30-7.51 says, "An affirmative vote of four-fifths of the members present", so the initial hearing that came before the Board previously, more than eighty percent voted for that, so there is already some confusion with Legal and the Board on how these things are supposed to happen. There has also been confusion with him, as he did not know that he had to file the variance before he got here. He thought he only had to file for the hearing, so he would like the opportunity to file for the variance. Given that there is some confusion both the Legal, the Board and other applicants, he asked for a continuance to afford the opportunity for clarification of the rules. He feels that the key word in the statute is "members present".

Mr. Cummings asked Mr. Crowe to clarify his concerns. Mr. Crowe stated that he is concerned that without the seventh member being at the meeting, there will be some question as to whether or not the appeal of the violation is granted or not since there has already been some issues with that. Legal had stated that a previous case was not granted, even though Section 30-7.51 specifically states, "An affirmative vote of four-fifths of the members present" and the key terms are, "being present".



There are six people present and five out of six is more than four-fifths of the people at eighty percent, so obviously there is some confusion as to what it takes to get something set aside, so he would request a continuance to be heard when all seven members are present. He would like the opportunity to file a request for a variance in this matter.

Vice Chair Hayworth asked if the Board would vote for a continuance in this case. The Board members voted 6-1 in favor of the motion and the continuance was granted.

**OTHER BUSINESS**

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Ms. Huffman and Ms. Wood was acknowledged as excused.

**ADJOURNMENT**

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There being no further business before the Board, the meeting was adjourned at 7:10 p.m.

Respectfully submitted,

Cyndy Hayworth, Vice Chairman  
Greensboro Board of Adjustment

CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
FEBRUARY 23, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, February 23, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Acting Chair, Frank Forde, Patti Eckard, Jeff Nimmer, Mark Cummings, Laura Blackstock and Adam Marshall. Planning Department staff were: Loray Averett, Nicole Smith, Mike Kirkman and Ron Fields, Code Enforcement Officer; David Ortega, GDOT; and Jennifer Schnierer and Tom Carruthers, City Attorney's Office.

Loray Averett stated that the Board would have to nominate and vote for a seated member to serve as Acting Chair since both the Chair and Vice Chair are not in attendance at the meeting.

Ms. Eckard nominated Frank Forde to be Acting Chair, seconded by Ms. Wood. The Board voted unanimously in favor of the motion.

Acting Chair Forde called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Acting Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Ms. Eckard moved approval of the January minutes, as submitted, seconded by Mr. Marshall. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Smith and Mike Kirkman of the Planning Department; Ron Fields, Zoning Enforcement Officer; and David Ortega, GDOT Department were sworn or affirmed for their testimony during the proceedings.

**CONTINUANCES/WITHDRAWALS**

Acting Chair Forde asked if there were any continuances or withdrawals to be considered. Loray Averett stated that the applicant for BOA-15-06, 2800 Patterson Street has asked that this item be continued to the March meeting.

Kevin Golden, the applicant, stated that he is requesting that this matter be continued to the March meeting as his architect has had a death in his family and has not completed the design drawings for the proposed parking involved in this matter.

Loray Averett stated that staff has no objection to the matter being continued and there was no one present that had objections.

Mr. Forde moved that this matter be continued to the March meeting at the request of the applicant, seconded by Mr. Marshall. The Board voted unanimously in favor of the motion.

## OLD BUSINESS

### VARIANCE

- (a) **BOA-15-01: 2130-A NEW GARDEN ROAD** Paul Jolin requests a variance from the minimum spacing requirement that a bar establishment located on a tract less than 5 acres must maintain from residentially zoned property. Variance: The proposed bar establishment will be zero feet from the nearest residentially zoned property, when no such establishment may be located within two hundred feet of residentially zoned property. This case was continued from the January 26, 2015 meeting. Section 30-8-10.4(F), Present Zoning – CD-C-M (Conditional District-Commercial-Medium) Cross Street – Battleground Avenue **(DENIED)**

Loray Averett stated that the applicant requests a variance from the minimum spacing requirement that a bar establishment located on a tract less than 5 acres must maintain from residentially zoned property. The proposed bar establishment will be located on property that is zero feet from the nearest residentially zoned property, when no such establishment may be located within 200 feet of residentially zoned property; thus the applicant is requesting a variance for zero separation from the residentially zoned property which is located south of the subject site. This request was continued from the January 26, 2015 meeting. The property is located on the south side of New Garden Road - west of Battleground Avenue. It is zoned CD-C-M (Conditional District-Commercial-Medium). The zoning conditions do not prohibit the use of a bar on the property. The property functions as a shopping center with various retail and personal use services. The Guilford County tax record indicates the property consists of 2.45 acres. Tax records reflect the shopping center was constructed in 1998. The applicant is proposing to lease the most western unit of the building addressed as Suite A of the building. A bar that is located on tracts less than 5 acres is required to meet specific ordinance standards. The property containing the proposed bar use is required to be 200 feet from residentially zoned property. As the records reflect, there is a portion of residential property adjacent to this commercial property. The residential property is located south of the subject site. There is also a portion of Office zoning property south of the subject site as well. The spacing requirement is measured from the property line to the property line. The subject site has driveway accesses from New Garden Road. The parking spaces are located in front of and around the building on all sides. There are minimal parking spaces along the area that abuts the residential zoning. Only about five of the spaces will be within 30 feet of the residentially zoned property. If the variance is granted, the owner will have to comply with the additional standards concerning frontage, screening and parking as noted in the development standards. Exhibit 6 shows there are two residential tracts south of the subject site. The nearest tract is addressed as 3521 Battleground Avenue, contains approximately 5.21 acres and is zoned R-3. The tract adjacent to this parcel is addressed as 2210 Tennyson Drive, contains approximately 5.0 acres and is also zoned R-3. Guilford County tax records reflect that both of these tracts are under the same ownership. Both properties have residential dwellings located on them. Staff's Exhibit #5 shows the parking layout on the site. On the subject site, there are approximately 2 parking spaces located north and 3 spaces located west of the residential zoning that will be within 30 feet of the residential zoning. Exhibit B contains information submitted from the applicant concerning his business plan for the subject site. The C-M, Commercial-Medium District: Primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks.

Chair Forde stated that he had a question about Article 7, District Standards, under Use it states, "Use separation is measured as the horizontal distance between buildings occupied by the subject use, measured along the shortest line that can be drawn between the exterior walls."

Mike Kirkman stated that in the Permitted Use Table when you're looking at zoning districts and uses, the letter "P" means that is a use permitted by right with no additional development standards. The "U" means that the use is also permitted in the district with additional specific development standards, in the case of a bar or nightclub use one of the specific standards are the separation requirements. There are other provisions that talk about use separation.

Acting Chair Forde asked for speakers in favor of the request to come forward and give their presentation.

Kevin DuHaime, 3823 Brandt Lake Court, was sworn in and stated that he wished to present a notarized letter from the owner of the residential property that states he is in support of this request for a variance. He stated that they are hoping to establish a craft beer and wine tasting facility that should not be considered a bar or nightclub establishment, although that is the use that they fall under in the ordinance. They will not serve food, but anyone wishing to bring in food from some of the local eating establishments are welcome to do so. It is felt that this will enhance the feeling of community and fellowship for the area. It is also felt that this facility would not have impacts on the residentially owned property to the rear.

Ms. Wood asked if there would be live music and Mr. DuHaime responded that that is a possibility, but all these types of activities would end late in the evening and not in the early morning hours.

There being no speakers in opposition to the request, the public hearing was closed.

**Board Discussion:**

Mr. Nimmer stated that he feels that this is a use that clearly was not contemplated by the LDO and he does not feel it is a bar or nightclub establishment and would not be detrimental to the surrounding area. He would support the request. Ms. Eckard stated that she has no opposition and would vote to support the request. Ms. Wood stated that she does have some reservations about it as there will not be any food offered from the facility. She is also concerned about the traffic impact to New Garden Road and Battleground Avenue. Mr. Marshall stated he is inclined to approve the request. The name of the Board is Board of Adjustment and they are there to make adjustments when the ordinance is too restrictive to the use. He feels this is a good use and would support it. Ms. Blackstock stated that she would also vote in favor of the request. She likes what the applicant has presented and it does not sound like a nightclub use. Mr. Cummings stated that he can find no hardship in this case and he cannot support the request.

Mr. Cummings stated that if the Board of Adjustment is following the law, has there been substantial evidence given that either there is a hardship that is peculiar to this piece of property that no one else has, which would allow for a variance, or is this property subject to the same rules and regulations as every other piece of property. He stated that he has not heard anything that says this business will be treated somehow different or is peculiar in a way that any other business is not. Even if he wants this to exist, he cannot justify that there is a hardship that results from conditions that are peculiar to the property. He feels it is his charge to do what the law requires. His responsibility as a member of this Board is to try to figure out what the law is and apply it to the facts. He does see that this is a reasonable use of land, however it is not considered adequate to justify the granting of a variance and he is bound by the case law which prevents the Board from amending a zoning ordinance. He would not support the variance.

Mr. Forde stated that, speaking for himself, he feels that the purpose of the Board is to do what the ordinance cannot do. In this case, there is a piece of property that for all intents and purposes, other than a quirk in the ordinance, would be able to have the proposed use except for the spacing requirement. It is a permitted use, and since the residential property will probably become zoned commercial and that would allow this type of use anyway. He feels that if varying requests are taken into extremes, then the Board would never be able to grant a variance. An example could include when citizens come in for placement of a garage being too close to a property line, and if that is the case and the law says all those requirements must be met, then the Board would not be able to grant any variances. He pointed out that there is no one appearing in opposition to the variance. The only person who would be impacted is the owner of the residential property to the rear, and that person has submitted a notarized letter in support of the granting of the variance.

Mr. Cummings asked that the public hearing be re-opened to discuss this further with the applicant, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion.

Kevin DuHaime, was previously sworn and stated that he wished to readdress some of the concerns and stated that there are several eating establishments in the immediate area and they did not wish to take away from these businesses. This is a busy area and that is one of the reasons they felt this would be a very good location for their use. He pointed out that this space has been empty for about 3 years and they would like to fill the space and contribute to the growth and tax base for the area. In response to comments by Mr. Cummings concerning the fact that there is no signed lease in place, they hesitate to sign a lease until it is determined whether they will be able to move forward with their business plans for this proposed facility.

The public hearing was closed.

Ms. Eckard stated that there are already several businesses in this area that serve alcohol and she feels this proposed use is supportive for the economy and the area. She feels that this would be a good use and would fit in nicely with this particular area and she would support the request as she does not see a strong reason for not granting the requested variance.

Mr. Forde reiterated that he does feel this is a type of business that would fit into the area that the fact that there was no one speaking in opposition to the request, he would support the request. He also pointed out that the speakers have brought supporting documentation from the residential landowner to the rear of the property.

Mr. Forde moved that in regard to BOA-15-01, 2130 New Garden Road, that the findings of fact be incorporated, the Zoning Enforcement Officer be overruled, and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying the strict application of the ordinance, because several legally allowable uses would be prohibited in the shopping center. The hardship of which the applicant complains results from conditions that are peculiar to the property and the unique circumstances related to the applicant's property because the large residentially zoned lot which adjoins the property has only one home, which home is located outside the separation requirements, but the lot line for that home is located within the separation requirements. The hardship results from the application of this ordinance to the property because the location of the aforementioned residentially zoned property is outside the separation requirement, while the lot line is inside the separation requirement. The hardship is not the result of the applicant's own actions because the residentially zoned property existed prior to the construction of the shopping center. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows for a legally allowable use to be realized in the shopping center with virtually no effect on the surrounding and adjoining residentially zoned property. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the shopping center to be operated at its highest and best use with minimal or no effect on the surrounding residentially zoned property, seconded by Mr. Marshall. The Board voted 5-2 and the motion failed. (Ayes: Forde, Marshall, Eckard, Blackstock and Nimmer. Nays: Cummings, Wood.)

## APPEAL OF A NOTICE OF VIOLATION

- (a) **BOA-15-03: 2602 McCONNELL ROAD** Michael Crowe, Attorney At Law, on behalf of Kim Nguyen, owner of the Mini Market, appeals a Notice of Violation concerning the placement of barbed wire on fences located on this property. This case was continued from the January 26, 2015 meeting. Section 30-9-4/5(D), Present Zoning R-5 (Residential Single Family), Cross Street – South English Street. **(WITHDRAWN)**

Nicole Smith stated that the applicant appeals a Notice of Violation concerning the placement of barbed wire on fences located on this property. This request was continued to the February 23, 2015 meeting. The property is located on the south side of McConnell Road east of South English Street. History: The property has existed for more than 30 years as a neighborhood store. Records reflect that the store was established in 1970, thus has existed for forty plus years. The property is zoned R-5, (Residential Single-family) and is a non-conforming use. In November 2014, the compliance office received a complaint that there was barbed wire on the fences around the store. The compliance office inspected the property and determined the barbed wire placed on the fences and around the front area of the store was in violation of prohibited fences. On December 19, 2014 the applicant through his attorney filed an appeal of the Notice of Violation concerning the prohibited barbed wire that was placed on the fences around the store and property boundaries. The R-5 Residential Single-family district is primarily intended to accommodate low-density single-family detached residential developments. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Acting Chair Forde asked if there was anyone wishing to speak in regard to this matter.

Michael Crowe, attorney speaking on behalf of the applicant, 2230 Independence Road, Winston-Salem, NC, was sworn in and stated that he is asking that the Board revoke the Notice of Violation because the barbed wire has been taken down since the Notice was received. He provided photographs showing that there is no barbed wire currently on the applicant's fence or property. He further stated the barbed wire was used to keep people from breaking into the side of the building. Those problems have now been addressed by other means.

Ms. Wood stated that she visited the property today and all the barbed wire was down, however, there is a split rail fence that appears to be on the neighboring property that does have barbed wire on the top of it.

Mr. Kirkman pointed out that since the applicant is now in compliance, it would be possible for the matter to be withdrawn at this time.

Acting Chair Forde asked if there was anyone else wishing to speak on this matter.

Barbara Mitchell, 2600 McConnell Road, was sworn in and stated that she lives next door to this property. She is the one that has the split rail fence that has the barbed wire on the top and it was placed there because of the people that hang around and sit on the fence and damage it. She wanted to be able to stop them from using her fence and walking across her property coming and going to the store. She provided photographs of her home and other homes in the area, indicating that these are well kept properties and they keep their property in good condition.

Mike Kirkman stated that the Board could withdraw this matter without a vote. Therefore, it was the consensus of staff and the Board that this matter would be withdrawn. The Code Enforcement Officer would be speaking to Ms. Mitchell about the use of barbed wire on the exiting fence.

## **NEW BUSINESS**

### **VARIANCE**

- (a) BOA-15-04: **4206-B PRINCETON AVENUE** Edward Shulga requests variances from the minimum side and rear setback requirements; and from a size and proportion standard. Variance #1: A recently constructed detached building encroaches 5 feet into a 10-foot side setback and 4.5 feet into a 10-foot rear setback. Variance #2: An accessory structure must be clearly subordinate to the principal structure in all dimensional aspects. The detached building is designed as a two-story building approximately 23 feet in height, while the house is a one-story structure approximately 16 feet tall. Sections 30-8-11.1(A)2 & 30-8-11.1(C)2, Present zoning R-5 (Residential Single Family), Cross Street - Ashland Drive. **(BOTH VARIANCES GRANTED)**

Loray Averett stated that the applicant is requesting variances for a recently constructed two-story detached garage. Variance #1: A recently constructed detached building encroaches 5 feet into a 10-foot side setback and 4.5 feet into a 10-foot rear setback. Variance #2: An accessory structure must be clearly subordinate to the principal structure in all dimensional aspects. The detached building is a two-story building approximately 23 feet in height, while the house is a one-story structure approximately 18 feet tall. The property is located on the north side of Princeton Avenue north of Ashland Drive and is zoned R-5 (Residential Single Family). The applicant's lot is rectangular shaped, approximately 50 feet wide by 150 feet deep. The depth is three greater than the width. The lot is developed with existing infrastructure consisting of the dwelling, driveway, landscape features, fencing, vegetative growth and trees. The applicant applied for and received a building permit in early February 2011. The site plan that was attached and reviewed by zoning was for a one-story building. In September 2014, A City Building Inspector was on the site and noticed the building had been completed as a two-story building and was too close to the side and rear lot lines. The inspector notified zoning staff and a Notice of Violation was issued to the applicant on or around September 11, 2014. The applicant filed for the variance requests on January 14, 2015. Based on the Land Development Ordinance one-story buildings less than fifteen feet tall may be constructed within 3 feet of the side and rear lot lines. Buildings taller than 15 feet must be 10 feet from the side and rear lot lines. Also Section 30-8-11.1 (A)2) states: An accessory structure must be clearly subordinate to the principal structure in all dimensional aspects. The building heights are considered to be part of the dimensional aspects. The building is located behind the house. The house is a one-story house and is approximately 18 feet tall. The recently constructed detached building is a two-story building and is approximately 23 feet tall. The footprint of the building on the ground is 16 feet x 20 feet, which is 320 square feet on the bottom story of the building. The R-5 Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Acting Chair Forde asked if there was anyone wishing to speak to this matter.

Edward Shulga, the applicant, was sworn in and stated that he started this project without a permit and it was almost complete when he was notified that a permit was necessary. At that time, the structure was almost complete when he got the permit. The footprint was already in place and the building was built. He did not want to destroy an old tree that is near the location of the garage and so decided to add an upper story instead of expanding out and having to move the tree. There are no windows in the upper area and it is only going to be used as personal space. It is accessible by the stairs shown in the photographs. There are no bathroom facilities in the upper area, although there is a bathroom on the lower level which is used by the shop area. He has not had anyone complain about the building. He also provided a notarized letter from one of the neighbors stating that they do not have a problem with it. The lower area is used for an at-home work shop for woodworking and there is electricity for that use only. He has no intention of using the building as a residential unit or to rent it out for that use.

Ms. Wood stated that she visited the property and it is not visible from the street.

Andrew Schoffner, 4204 Princeton Avenue, was sworn in and stated that he is not opposed to this building on the property. It is difficult for anyone passing by on the street to see the building from the street. The construction has been going on for a long time and there have been several inspections on the building. He lives 2 houses down and it is not easily visible from his property. He has no objection to the building remaining on the property.



There being no one to speak in opposition to the request, the public hearing was closed.

### **Board Discussion:**

The majority of the Board members felt that this building was not a hazard and did not provide any safety or health concerns for the neighborhood. Mr. Cummings stated that he was having a difficult time finding unnecessary hardships in this matter and based on that he would have to vote in the negative.

Mr. Forde moved that in regard to BOA-15-04, 4206-B Princeton Avenue, that the findings of fact be incorporated, the Zoning Enforcement Officer be overruled, and the Variance #1 be granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying the strict application of the ordinance, because the applicant would not be allowed to enjoy his property and would be forced to deconstruct the second story of the storage shed. The hardship of which the applicant complains results from conditions that are peculiar to the property and the unique circumstances related to the applicant's property because if the building was constructed within the applicable setback, landscaping including significant trees would be forced to be removed. The hardship results from the application of this ordinance to the property because the landscaping and trees were in place on the property prior to the construction of the garage. The hardship is not the result of the applicant's own actions because the landscaping and trees were in place prior to the applicant's acquisition of the property and the construction of the second story. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows the applicant to use his property in a manner not inconsistent with the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because it allows the applicant to continue to enjoy the use of his property in a fair and consistent manner with virtually no effect on his surrounding neighborhood, seconded by Ms. Eckart. The Board voted 7-0 in favor of the motion. (Ayes: Marshall, Forde, Blackstock, Wood, Eckard, Cummings, Nimmer. Nays: None.)

All comments previously made were incorporated for Variance #2 in regard to the height of the building, and also moved by Mr. Forde, seconded by Ms. Eckard. The Board voted 6-1 in favor of the motion. (Ayes: Marshall, Forde, Blackstock, Wood, Eckard, Nimmer. Nays: Cummings.)

There was a short break from 7:55 until 8:05 p.m.

- b) BOA-15-05 4823 COUNTRY WOODS LANE** Donald E. Johnson, Jr. requests a variance from a minimum front setback requirement. Variance: A proposed new single family dwelling will encroach approximately 138 feet into a required average front setback of approximately 188 feet. The proposed dwelling will be setback at a minimum of 50 feet. Section 30-7-1.4(A)1)b), Present Zoning R-3, (Residential Single Family), Cross Street – Joseph Bryan Boulevard. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed new single-family dwelling which will encroach approximately 138 feet into a required average front setback of approximately 188 feet. The proposed dwelling will be setback at a minimum of 50 feet. The property is located on the south/eastern side of Country Woods Lane, north of Joseph M. Bryan Boulevard and is zoned R-3. It is considered a through lot with two street setbacks. The lot has

frontages on Country Woods Lane and Joseph M. Bryan Boulevard and contains 2.07 acres. This property was annexed into the City on June 30, 1996. There are only two house located east of the subject site that may be used in calculating the average setback for the vacant subject lot. There are no houses or lots located west of the subject site that meet the requirement for averaging calculations. The average setback was determined using the two houses nearest the subject site on the same block face. The house located at 4821 Country Woods Lane is approximately 116 feet from the front property line and the house located at 4819 Country Woods Lane is approximately 260 feet from the front property line; thus the average setback for 4823 Country Woods Lane was determined to be 188 feet from the front property line. The applicant is requesting to be allowed to construct his house 50 feet from the front property line instead of the averaged setback of 188 feet. The lot is an irregular shaped lot. One side lot line is 130 feet longer than the other side lot line which causes a severe angle on the lot line adjacent to Bryan Boulevard. The property has less depth than the other two lots nearest the subject that was used for the average calculated setback. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Acting Chair Forde asked if there was anyone wishing to speak on this matter.

Donald Johnson, Jr., representing the property owner, 5702 Northlake Drive, was sworn in and stated that there is no City provided water or sewer to this property. The neighbor is tied onto the water from the City at the far corner of the lot so it does not come across that property to adjoin the subject property. A septic field would be necessary on the long corner of the subject lot and will go down to Bryan Boulevard. He pointed to the map provided and stated that a septic system would have to be placed where the arrows indicate. The other side of the lot is like a gully and there is about a 25 – 30 foot drop from the front of the lot, so this is not a feasibly useable area for the septic field. They have talked with the City Water Department and the only way they would bring City water and sewer to the property is if the all the owners across the street and at the end of the street, who are also not hooked up to City water and sewer, also signed up for City water and sewer and this would take 3 – 4 years. It would also be at their own expense. City taxes are paid on the property.

Shabu Labote, 840 Meadowlands Drive, Winston-Salem, the proposed property owner, was sworn in and stated that he intends to have a 5,000 square foot home built on the property. The house would have four bedrooms and would be 2 stories. A perk test has been done to provide water and sewer for the property. He pointed out that there are other houses on the street that are only 25 feet away from the street. The City Water Department has given their permission for the use of the property with the proposed septic field.

There being no one speaking in opposition to the request, the public hearing was closed.

**Board Discussion:**

The majority of the Board members supported the request. Ms. Wood stated that she does not feel this is a good mix for the surrounding properties because 50 feet is not very far from the street for a two story house. She would not support the request.

Mr. Forde moved that in regard to BOA-15-05, 4823 Country Woods Lane, that the findings of fact be incorporated, the Zoning Enforcement Officer be overruled, and the variance be granted based on the following: there are practical difficulties or unnecessary hardships that result from

carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying the strict application of the ordinance, because due to the topography and the lack of City water and sewer services, the lot is virtually unusable. The hardship of which the applicant complains results from conditions that are peculiar to the property and the unique circumstances related to the applicant's property because the construction of Bryan Boulevard and the lack of City services are truly peculiar to this lot. The hardship results from the application of this ordinance to the property because the existing neighbor's placement of their houses on their lots created this hardship. The hardship is not the result of the applicant's own actions because the applicant did not place the adjoining houses on those lots which established the setbacks from which he is seeking the variance. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows for the residential use of the property in a residential zone. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the allowable use of the property in a manner consistent with the neighborhood, seconded by Ms. Eckart. The Board voted 6-1 in favor of the motion. (Ayes: Marshall, Forde, Blackstock, Eckard, Cummings, Nimmer. Nays: Wood.)

- c) **BOA-15-06: 2800 PATTERSON STREET** Kevin Golden requests variances from the minimum off-street parking and paving requirements. The requests are contingent on approval of a rezoning request from HI (Heavy Industrial) to CD-LI (Conditional District-Light Industrial). **Variance #1:** A proposed change in use from warehouse storage to a flea market requires the applicant to provide 110 paved spaces. The applicant can only provide a total of 44 spaces; thus the applicant is requesting a variance for 66 spaces. **Variance #2:** The applicant is requesting a 24 month (two year) temporary exemption from paving fifteen spaces that are gravel. Twenty-nine of the forty-four spaces are paved and fifteen of the spaces are gravel. Section 30-11-5 (Parking Ratios), 30-8-10.4(J) (District use Requirements for Flea Market Classification) and 30-11-12.4 (Parking Area Design Requirements), Present Zoning-HI, (Heavy Industrial) which has been proposed to CD-LI, (Conditional District-Light Industrial), Cross Street – South Holden Road **(CONTINUED TO MARCH 2015 MEETING)**

### OTHER BUSINESS

None

### ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Huffman and Ms. Hayworth was acknowledged as excused.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Frank Forde, Acting Chairman  
Greensboro Board of Adjustment

FF/jd



**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
MARCH 23, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, March 23, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cheryl Huffman, Cyndy Hayworth, Frank Forde, Patti Eckard, Mark Cummings, Sarah Wood, and Laura Blackstock. Planning Department staff were: Loray Averett, Nicole Smith, David Ortega, GDOT; and Jennifer Schnier, City Attorney's Office.

Chair Huffman called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**SWEARING IN OF STAFF**

Loray Averett and Nicole Smith of the Planning Department and David Ortega, GDOT, were sworn or affirmed for their testimony during the proceedings.

**CONTINUANCES/WITHDRAWALS**

Chair Huffman asked if there were any continuances or withdrawals to be considered. Loray Averett stated that she has not been notified of any continuances or withdrawals.

**APPROVAL OF MINUTES**

Mr. Forde moved approval of the February minutes, as submitted, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion.

**OLD BUSINESS**

**VARIANCE**

- (a) BOA-15-06: **2800 PATTERSON STREET** Kevin Golden requests variances from the minimum off-street parking requirements and paving requirements. These requests were continued from the February 23, 2015 meeting. **Variance #1:** A proposed change in use from warehouse storage to a flea market requires the applicant to provide 110 paved spaces. The applicant can only provide a total of 44 spaces; thus the applicant is requesting a variance for 66 spaces. **Variance #2:** The applicant is

requesting a 24 month (two-year) temporary exemption from paving a portion of the required spaces that are gravel. Twenty-nine of the spaces are paved. The remainder of the spaces are gravel. Sections 30-11-5 (Parking Ratios), 30-8-10.4(J) (District use Requirements for Flea Market Classification) and 30-11-12.4 (Parking Area Design Requirements), Present Zoning-Conditional District-Light Industrial), Cross Street-South Holden Road. **(CONTINUED TO APRIL 27th MEETING)**

Loray Averett stated that the applicant requests a variance from the minimum number of required parking spaces. The applicant is proposing to change the use from a warehouse to an indoor flea market. The proposed use will require 110 spaces and the applicant is requesting a variance to be allowed to provide 44 parking spaces. The variance request is for 66 spaces. If granted, the applicant is also requesting a 24-month (two year) exemption from paving the remaining gravel spaces. Twenty nine of the spaces located in a portion of the front area of the property are paved. The property is located on the north side of Patterson Street east of South Holden Road. The applicant's rezoning request from HI (Heavy Industrial) to CD-LI (Conditional District – Light Industrial) was approved by the Zoning Commission at the February 9, 2015 meeting with the following conditions: 1. Uses shall be limited to all uses permitted in the LI district except any use that requires a drive-thru facility. 2. Maintain the existing structure without expansion. The property contains 1.79 acres. Tax records indicate the structure was built in 1956 and contains approximately 33,000 square feet. The building was last used for warehouse and industrial manufacturing. It is now vacant and the applicant is proposing to open a flea market. The change in use from a warehouse operation to a flea market increases the minimum number of required parking spaces. The building is approximately 33,000 square feet and the previous warehouse use required 25 spaces. The new use will require 110 spaces. As shown on Exhibit B, 29 of the 44 spaces in front of the building are paved and 15 of the spaces are gravel. If the variance is granted, the applicant is also requesting a temporary variance to be exempt from paving the 15 gravel spaces located in the front and other gravel spaces located behind the fence area. The LI, Light Industrial District is primarily intended to accommodate limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities which in their normal operations have little or no adverse effect upon adjoining properties.

Chair Huffman asked if there was anyone wishing to speak on this matter.

Kevin Golden, the applicant, was sworn in and stated that he owns Golden Antiques and Treasures in Summerfield and he is proposing an antiques mall at the proposed location on Patterson Avenue. The flea market designation is incorrect and does not convey the actual use of the facility. There are several other antiques shops on Patterson Avenue and he feels this use will fit in very well with the other locations in the area. Parking issues are the reasons for the requests as according to City requirements, there are not enough parking spaces in the designated area. He pointed out that there is additional space at the side and rear of the building behind a fenced area that can be used (about 60 spaces) for parking to accommodate the needs for the use in the building. He pointed out that on any given day there may only be a total of 40 people visiting the facility throughout the day. This is not like a "flea market" where there are many, many visitors throughout the day. In response to a question by Ms. Eckard, he feels that there may only be a total of 30 people at any given time during a weekend day. The hours of operation will be from 10:00 a.m. until 6:00 p.m., seven days a week. He is planning to move because his present location has been sold.

In response to questions, he pointed out that people who visit the facility come in and visit for approximately about an hour and then leave, they do not stay for extended lengths of time. He also pointed out that there are no tables set up in a "Flea Market" type scenario. Each vendor has a "showroom" atmosphere, showing their furniture, decorative items, etc. for sale. These vendors come to the facility about once a week to stock their showroom and leave. The vendor is not allowed to stock or re-stock their showroom area on weekends while the area is open to the public. Currently, he has not signed a lease as he is waiting for the Board's decision before doing so. If the variances are not granted he would be unable to use this location for his use. He takes in estate sales items and household contents and these people are considered vendors. Ms. Hayworth pointed out that there is a big difference between an "antiques mall" and a "flea market" and the use is very different from each other. She pointed out that a "flea market" has many, many visitors that come and spend several hours or all day, going from one vendor space to another vendor space and these visitors take a lot of time in these parking spaces. However, in an "antiques mall" scenario, visitors may come and spend an hour or so visiting all the vendors and then they leave.

Loray Averett stated that nothing has been submitted by the applicant in regard to parking spaces at the side of the building behind the fenced area. She stated that the architect should submit a drawing that supports that number of parking spaces. Mr. Golden stated that the architect, Mr. McRae, has had a death in his family and has been unable to work on the drawings for the additional parking spaces behind the fence.

David Ortega, GDOT, stated that the determination of the number of parking spaces is based on square footage of the building and is determined in the Planning Department. He assumes that those numbers are based on a particular use and that there is an appropriate number of parking spaces available for that particular use.

Mr. Forde stated that he feels that the only thing the applicant is really asking for is a variance for an opportunity to wait 2 years to pave the parking lot, because it is obvious that there is plenty of room for him to provide more than enough parking spaces to meet the requirements on this property.

Dan Kolvarik, 205 Cedarview Drive, representing DKL Investments, was sworn in and stated that they own the property immediately across the street from the subject property. They were initially concerned about people coming across the street and parking in their parking lot. He is in favor of the applicant's use of the property because it has been vacant for quite some time. He feels it would be a financial hardship to have to pave all those parking spaces inside the fenced area. He has no problem with the area continuing to be a gravel parking lot, with bumpers in place and the spaces marked off to encourage people to park there. He hopes the applicant will be very successful in his plans for the property.

There being no other speakers the public hearing was closed by unanimous vote.

### **Board Discussion:**

Mr. Cummings stated that he would not support this request because he does not feel that all the requirements to be able to grant the variance have been met. He does not see the hardship incurred by the applicant. The applicant also does not have an active lease for the property.



The other members of the Board stated that they would support the request because they felt this was a good use of the property and would support other businesses in the immediate area.

After a short discussion, Chair Huffman suggested that the Board may wish to continue this matter to allow the applicant the opportunity to have his architect complete the drawings of the additional parking spaces since he has been unable to do so because of a death in his family. There was also concern that the applicant wants to wait 2 years to pave the parking area. There is also support from the business across the street.

Ms. Blackstock moved that this matter be continued to the April meeting because she does not feel that this is sufficient information to make a legitimate decision, seconded by Ms. Eckard. The Board voted 6-1 in favor of the motion. (Ayes: Huffman, Wood, Eckard, Hayworth, Forde, Blackstock. Nays: Cummings)

Thereupon, there was a short break from 7:30 until 7:40 p.m.

## **NEW BUSINESS**

### **VARIANCE**

- (a) BOA-15-07: **3601 MADISON AVENUE** Michael and Julia Fresina request a variance from a minimum front setback requirement. **Variance:** A proposed front porch addition will encroach approximately 3.15 feet into a required average front setback of approximately 73.65. The proposed porch addition will be setback at approximately 70.5 feet from the front setback line adjacent to Madison Avenue. Section 30-7-1.4(A)1b), Present Zoning-R-3 (Residential Single-family), Cross Street - East Brentwood Road.  
**(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed front porch to an existing single-family dwelling which will encroach approximately 3.15 feet into a required average front setback of approximately 73.65 feet. The proposed porch will be setback approximately 70.5 feet from the front property line adjacent to Madison Avenue. The property is a corner lot located at the southwestern intersection of Madison Avenue and E. Brentwood Road and contains a single-family dwelling. Tax records reflect the lot size is approximately 32,223 square feet or 0.74 acres and the house was originally built in 1955. The front property line is adjacent to Madison Avenue. On February 9, 2015, the applicant applied for a building permit to add a garage, rear porch addition and to add a larger front porch onto the front of the house. The existing front porch on the applicant's house is approximately 4 feet wide by 8 feet long for a total of 32 square feet. The applicant is proposing to remove this porch and construct a new front porch. The dimensions for the new porch will be 6 feet wide by 18.7 feet long and will contain approximately 112 square feet. There are only two houses located north of the subject site within this block that may be used in calculating the average setback for the subject lot. In 2014, Council adopted infill standards for residential single family homes and effective April 4, 2014 these standards for residential front setbacks were implemented. The average setback was determined using the two houses nearest the subject site on the same block face. The house located at 3605 Madison Avenue is approximately 72.1 feet from the front property line and the house located at 3607 Madison Avenue is approximately 75.2 feet from the front property line; thus the average setback for this portion of Madison Avenue was determined to be 73.65 feet from the front property line. The applicant is requesting to be allowed to construct a

new front porch 70.5 feet from the front property line instead of the averaged setback of 73.65. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Huffman asked if there was anyone wishing to speak in favor of this request.

Michael and Julia Fresina, the applicants, were sworn in and stated that they purchased the house on Madison Avenue to move into and they would really like to construct a front porch that would be big enough to use rocking chairs so they can continue to connect with their neighbors. It is felt that the proposed front porch would not be detrimental to the character of the neighborhood.

There being no other speakers the public hearing was closed by unanimous vote.

### **Board Discussion:**

All the Board members stated that they would support this request for a variance because the proposed porch would be an asset to the neighborhood and would not be intrusive to the area.

Mr. Forde move that in regard to BOA-15-07, 3601 Madison Avenue, that the Zoning Enforcement Officer be overruled and a variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardship will result to the property by applying strict application of the ordinance because the allowable use of the property would not be allowed in a manner consistent with the neighborhood. The hardship of which the applicant complains results from conditions that are peculiar to the property, unique circumstances related to the applicant's property because the front building setback lines for the property are determined by the neighboring property. The hardship results from the application of this ordinance to this property because the ordinance relies on the placement of the adjoining buildings to determine the setback of this property. The hardship is not a result of the applicant's own actions because the applicant did not place the adjoining buildings on the adjoining properties. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the established setback will be established in a fair and consistent manner. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the applicants to use their property in a fair and equitable manner, seconded by Ms. Hayworth. The Board voted 7-0 in support of the motion. . (Ayes: Huffman, Wood, Eckard, Hayworth, Forde, Blackstock and Cummings. Nays: None)

- (b) BOA-15-08: **4308 STARMOUNT DRIVE** Richard and Holly Harding request a variance from a minimum side setback requirement. **Variance:** A proposed two-story detached garage will encroach 5 feet into a 10-foot side setback. Section 30-8-11.1-C-2, Present Zoning-R-3, Cross Street-Worthington Place. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed two-story detached garage which will encroach 5 feet into a 10 foot side setback requirement. The property is located on the western side of Starmount Drive south of Nut Bush Road E. and is zoned R-3 (Residential Single Family). The applicant's lot is mostly rectangular shaped, with

slight angles on the southern side lot line and triangular angles on the rear lot line. The lot contains approximately 27,000 square feet. It is developed with existing infrastructure consisting of a two-story dwelling, driveway, landscape features, fencing, vegetative growth and trees. Based on the Land Development Ordinance one-story buildings less than fifteen feet tall may be constructed within 3 feet of the side and rear lot lines. Buildings taller than 15 feet must be 10 feet from the side and rear lot lines. The building is proposed to be located behind the existing house. The footprint of the building on the ground is proposed to be 20.8 feet x 30.8 feet, which is 640 square feet on the bottom story of the building. The second floor of the two-story garage shows an exercise space, bathroom and storage areas. FYI: Home occupations may not be conducted in detached residential accessory buildings. Also, this plan was not reviewed for a detached accessory dwelling unit. The R-3 Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Huffman asked if there was anyone wishing to speak on this matter.

Richard Harding, the property owner, was sworn in and stated that the architect would speak for him on this request.

Steve Jobe, architect, was sworn in and presented elevation drawings of the proposed garage structure. He stated that there is an existing 6 foot fence and existing vegetation. This project was begun in 2010, a patio was installed in the summer of 2012, and they intended to add a garage at a later date. It is felt that the proposed garage placement is not a detriment to the neighborhood and the immediate housing structures next door. The placement was chosen so that they would not have to take down any of the mature trees on the property. There has been no objection from the neighbors.

There being no other speakers the public hearing was closed by unanimous vote.

### **Board Discussion:**

All the Board members stated that they would support this request for a variance because the proposed garage would fit nicely into the neighborhood and would not be intrusive to the area.

Mr. Forde move that in regard to BOA-15-08, 4308 Starmount Drive, that the Zoning Enforcement Officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardship will result to the property by applying strict application of the ordinance because the allowable use of the property would not be allowed in a manner consistent with the neighborhood. The hardship of which the applicant complains results from conditions that are peculiar to the property, unique circumstances related to the applicant's property because significant landscaping and structures would be required to be destroyed or relocated in order to place the allowable garage on the site. The hardship results from the application of this ordinance to this property because had the structure been constructed when the house was built or under the prior ordinance, no variance would be needed or required. The hardship is not a result of the applicant's own actions because the home and the trees were in place prior to the desire for the garage and the change in the ordinance. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it allows for the applicant's use of the property in its highest and best use in a manner consistent with the neighborhood. The

granting of the variance assures the public safety and welfare and does substantial justice because it allows for the applicants to use their property in a fair and equitable manner, seconded by Ms. Eckard. The Board voted 7-0 in support of the motion. (Ayes: Huffman, Wood, Eckard, Hayworth, Forde, Blackstock and Cummings. Nays:

**OTHER BUSINESS**

None.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Nimmer and Mr. Marshall were acknowledged.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 8:09 p.m.

Respectfully submitted,

Cheryl Huffman, Chairman  
Greensboro Board of Adjustment

CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
APRIL 27, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, April 27, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Cheryl Huffman, Chair, Cyndy Hayworth, Patti Eckard, Frank Forde, Mark Cummings, Sarah Wood, Jeff Nimmer; Planning Department staff were: Loray Averett and Nicole Smith; Jennifer Schneier, City Attorney's Office.

Chair Huffman called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Ms. Hayworth moved approval of the March minutes as submitted, seconded by Mr. Forde. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett and Nicole Smith were sworn in for their testimony regarding issues on the agenda for today's meeting.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that Item BOA-15-06, 2800 Patterson Avenue has been withdrawn by the applicant.

**OLD BUSINESS**

**VARIANCE**

- (a) BOA-15-06: **2800 PATTERSON STREET** Kevin Golden requests variances from the minimum off-street parking requirements and paving requirements. These requests were continued from the February 23, and March 23, 2015 meetings. **Variance #1:** A proposed change in use from warehouse storage to a flea market requires the applicant to provide 110 paved spaces. The applicant can only provide a total of 44 spaces; thus the applicant is requesting a variance for 66 spaces. **Variance #2:** The applicant is requesting a 24 month (two-year) temporary exemption from paving a

portion of the required spaces that are gravel. Twenty-nine of the spaces are paved. The remainder of the spaces are gravel. Sections 30-11-5 (Parking Ratios), 30-8-10.4(J) (District use Requirements for Flea Market Classification) and 30-11-12.4 (Parking Area Design Requirements), Present Zoning-Conditional District-Light Industrial), Cross Street-South Holden Road. **(WITHDRAWN)**

## **NEW BUSINESS**

### **VARIANCE**

- (a) BOA-15-09: **300 MEADOWBROOK TERRACE** Richard and Betsy Lane request a variance from a minimum rear setback requirement. **Variance:** A proposed attached garage addition will encroach approximately 10 feet into a required 30-foot rear setback. Section 30-7-3.2 Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street - Allendale Road. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed attached garage to a single-family dwelling which will encroach 10 feet into a 30-foot rear setback. The property is located at the northwestern intersection of Meadowbrook Terrace and Allendale Road and is zoned R-3. It is a corner lot. The property contains a single family dwelling with an existing attached one-car garage. Property records reflect the house was originally built in 1938. The lot contains approximately 22,650 square feet or equivalent to 0.52 acres. Exhibit 4 contains short minutes for a variance request that was heard on June 24, 1991. The request was from the same applicants for an attached garage to encroach 16.5 feet into a 30 foot street setback adjacent to Allendale Road. The request was approved, but construction never began. Construction must begin within 12 months of the variance being granted or the variance becomes null and void. This request is different from the request that was heard 24 years ago in 1991. The location of the garage has changed and the request this time is from the rear setback rather than from a street setback. The front elevation of the home is clearly oriented to Meadowbrook Terrace. The garage dimensions are proposed to be 32 feet by 32 feet for a total area of 1,024 square feet. The applicant is also proposing a garden terrace on top of the garage. There is an existing driveway access for the existing garage located on Allendale Road and another existing access driveway from Meadowbrook Road. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Huffman asked if anyone wishing to speak on this matter would come forward to be sworn in for their testimony.

Richard Lane, the applicant, 300 Meadowbrook Terrace, was sworn in and stated that they wish to construct a garage with a garden on the roof at the rear of the residence. The original garage is hardly big enough to get one vehicle in it.

Loray Averett presented photos of the property showing the location of the existing garage and the photo is marked with the placement of the proposed garage.

In response to Board member questions, Mr. Lane stated that none of the neighbors are opposed to the proposed new garage or its location. He also advised that they are going to try and save the

existing large tree that is in the immediate area. The driveway will be moved to access the new garage and the old driveway will be removed and grass planted in its place.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

**Board Comments:**

All Board members indicated their support of this request.

Ms. Eckard moved that in regard to BOA-15-09, 300 Meadowbrook Terrace, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because they need to go 10 feet into a 30 foot setback to build a two-car garage. If the variance is not granted they would only be able to continue to have the one-car garage which is too small for the house and that a two car garage is a more typical single family feature. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built to the rear of the lot, pushing the garage back on the property and the owners wish to minimize the impact to the property by using the property's topography to build the garage. The hardship results from the application of this Ordinance to the property because the house was built in 1937 prior to there being any type of zoning laws and in the 1950s was established with a 30 foot setback. The hardship is not the result of the applicant's own actions because the property was purchased in 1988 and no additions have been made to the property. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the garage would be flush with the side of the house, matching stone will be used and it will have a covered patio and garden, along with remaining in line with other properties in the immediate neighborhood. The granting of this variance assures the public safety and welfare and does substantial justice because similar garages are on other homes in the neighborhood and fire and safety equipment vehicles would still be able to access the property, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Forde, Nimmer, Eckard, Cummings and Wood. Nays: None.)

- (b) BOA-15-10: **1601 EAST BESSEMER AVENUE** Donald G. Sparrow, Attorney for H. Lane properties, LLC requests a variance from the minimum spacing requirement that a Special Event Facility must be separated from any religious assembly by at least 200 feet. **Variance:** A proposed special event facility will be located on property which also contains 3 religious assemblies and will also be located adjacent to property at 1015 Huffman Street that contains a religious assembly. No such establishment may be located within 200 feet of any property containing a religious assembly. Section 30-8-10.4 (P), Present Zoning-CD-C-M & C-M, Cross Street-Tucker Street.  
**(GRANTED)**

Loray Averett stated that the applicant requests a variance from the minimum spacing requirement that a special event facility must maintain from any religious assembly. The proposed special event center will be located on the same lot that currently contains 3 other religious

assemblies and will be adjacent to property located at 1015 Huffman Street which also contains a religious assembly, when no such establishment may be located within 200 feet of property containing a religious assembly. The distance is measured along a straight line from property line to property line at the closest point. The property has street frontages and driveway accesses from East Bessemer Avenue, Tucker Street and a service type road/ramp that accesses to Wendover Avenue with a connector ramp to US Highway 29. The lot with the building is zoned CD-C-M and the lot that contains the parking area is zoned C-M. Both lots are under the same ownership and the property is defined as a zone lot. A zone lot is one or more lots in undivided ownership that permits construction of a principal building and supports the applicable parking spaces and other standard requirements. The property functions as a multi-tenant building with various retail, personal use services, and religious assemblies. The Guilford County tax record indicates the two lots consist of 1.85 acres. Tax records reflect the original building was constructed in 1955. The applicant is proposing to locate a special events facility in the lower northern corner of the building portion closest to the service/ramp road area. The special events facility will be located in the same building as 3 other religious assemblies. Two of the churches are located on the upper level of the building and access for those units is from the East Bessemer Avenue driveway. One of these churches also has an entrance on the lower level from the Tucker Street access. There is a third religious assembly located on the lower portion of the building with their access from Tucker Avenue also. There is also a religious assembly located at 1015 Huffman Street. This property is adjacent to the subject lot. The property lines are split by a wooded area and an existing environmental feature known as Muddy Creek. The applicant applied for a change in use from church to a special events center in September 2014. Review comments were made during that same time frame concerning the spacing requirements. Fire prevention review comments are included as well. Their review has been completed and they have approved their portion of the review. It mentions the occupant load may be as high as 341 persons. FYI: Based on LDO Section 30-8-13.4, if the variance is approved, the applicant is required to comply with Special Standards for Entertainment Facilities concerning compliance with providing and complying with their security plans. Primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks.

Mr. Nimmer asked what was the original intent of the separation of 200 feet. Counsel Schierer stated assembly uses were determined to generate higher traffic and more people at the location, so whether it's an assembly for religious use or an event facility, they try and not have them too close together. Assembly uses have their own separation criteria.

Mr. Forde pointed out that once you allow a religious assembly use with the accompanying development standards into a shopping center, the dynamic of the retail use is changed into a different style of use. Counsel Schierer stated that there was a lot of discussion about this issue and it was determined that the ordinance was drafted regarding assembly use and not necessarily being mindful of religious assembly uses in retail areas. Therefore, the broad definition is being used in this instance. Mr. Cummings asked for a copy of the purpose determined by City Council in approving this Ordinance. Counsel Schierer stated that she would forward this information to Mr. Cummings.

Chair Huffman asked if anyone wishing to speak on this matter would come forward to be sworn in for their testimony.

Donald Sparrow, attorney representing the applicant, 901 Battleground Avenue, was sworn in and stated that he would hand out a booklet that provides more information concerning the subject



property. He addressed Tab 2, which shows some “before and after” photographs of the property, which was previously a drive-in restaurant known as Monroe’s. Other photographs show the property as it has been developed over the years and what it currently looks like. There is newly striped, newly asphalted, driveway on the property. There was also a photograph of the old, Alpat restaurant property to the south. Everything in the immediate area is retail, warehouse or construction use. This particular property is a substantial distance from residential property. Tab 1 consisted of four letters from ministers that support this variance request. He pointed out that the applicant is wishing to establish a 3,500 square foot area for an event center and he does feel that there would be absolutely no harm to the surrounding area. All parking requirements are met, the Fire Department has reviewed the property for compliant assembly concerns. If granted, the variance would allow the applicant to use the property for the intended use and it would be a benefit to the public and hopefully serve the needs of the community. He feels that they have met all the required criteria and asked that the Board grant the variance request.

In response to questions by the Board members, Mr. Sparrow stated that the hours would vary. It could be the same hours as the other religious assemblies or it may be different hours, depending on the type of event that would be taking place. In regard to parking, there is a generous amount of parking spaces on the property.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Mr. Forde moved that in regard to BOA-15-10, 1801 E. Bessemer Avenue, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because an allowable use (that absent one development standard would be allowed), prohibits the desired use. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant’s property because the use of retail spaces for religious assembly was not fully considered at the time of the enactment of the LDO. The hardship results from the application of this Ordinance to the property because as previously stated, the ordinance failed to adequately account for religious assemblies being used within traditionally retail spaces and retail zoned districts. The hardship is not the result of the applicant’s own actions because the development ordinance provision related to a religious assembly was enacted prior to the applicant’s acquisition of the property. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it allows for the use of the property in a manner consistent with its current zoning classification, notwithstanding one development standard and the granting of this variance assures the public safety and welfare and does substantial justice because it provides the community and the adjacent religious assemblies with a community asset, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Forde, Wood, Nimmer, Eckard and Cummings. Nays: None.)

A short break was taken from 6:25 until 6:40 p.m.

### **SPECIAL EXCEPTION**

- (a) BOA-15-11: **2307 SHERWOOD STREET** Brian Kutzer requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a family care home separation encroachment from the current one-half mile development spacing standard. **Special Exception Request:** The proposed family care home will be 2,346 feet from a family care home (6 or less persons) located at 303 Westdale Place when 2,640 feet is required. Present Zoning-R-5 (Residential-Single-family), Cross Street-Northridge Street. **(GRANTED)**

Nicole Smith stated that the applicant is proposing to locate a family care home which is too close to an existing family care home. It will be 2,346 feet from a family care home (6 or less persons) at 303 Westdale Place, when 2,640 feet is required. The lot is located on the south side of Sherwood Street east of Northridge Street and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at this location and it is too close to an existing family care home located at 303 Westdale Place. The separation requirement is 2,640 feet. This proposed home will be 2,346 feet from the existing home at 303 Westdale Place. Privilege license records reflect the family care home at 303 Westdale Place is operational and required renewals are in compliance. The proposed family care home location is located south and east of the existing family care home. Exhibit 2 shows they are separated by many other homes in the neighborhood. The R-5, Residential Single-family District is primarily intended to accommodate low density single family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less. None of his neighbors have a problem with their request and are in support.

Chair Huffman asked if anyone wishing to speak on this matter would come forward to be sworn in for their testimony.

Brian Kutzer, the applicant, 2307 Sherwood Street, was sworn in and stated that this request is to allow one of their foster children to remain in their home. This young man has aged out into an adult care role, and they have transitioned into an adult care service for him through Easter Seals UCP. Easter Seals has asked if they could possibly take on one more client. In the process of requesting the 5600-F license, they realized that there was a problem with the zoning and their separation requirement to the existing family home. He and his wife have done foster care for 19 years and they were unaware that the other adult care home was in existence and the clients have never intermingled with each other. He does not see a risk of these clients cloistering together in the neighborhood. He feels this would be a service to the community as they would be able to offer service to an additional person that would probably be in a less restrictive setting than an institutional setting. They only have room for 2 people and that is all they are requesting.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

### **Board Comments:**

All Board members stated that they would support this request.

Mr. Nimmer moved that in regard to BOA-15-11, 2309 Sherwood Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Special Exception granted based on the following: The Special Exception is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because while the distance is less than 240 feet, the orientation of roads and other barriers make it difficult for the homes to interact

with one another. The granting of the Special Exception assures the public safety and welfare and does substantial justice because the home operates as a family care home and fits well in the neighborhood, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion to grant the Special Exception. (Ayes: Huffman, Hayworth, Forde, Nimmer, Eckard, Wood, and Cummings. Nays: None.)

**OTHER BUSINESS**

Loray Averett stated that there are some Board members up for re-appointment and those will be discussed at the next Council meeting. As soon as staff finds out their determinations, she will inform the Board members.

**ACKNOWLEDGEMENT OF ABSENCES**

None.

\* \* \* \* \*

There being no further business before the Board, the meeting adjourned at 6:55 p.m.

Respectfully submitted,

Cheryl Huffman, Chair  
Greensboro Board of Adjustment



**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
MAY 26, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Tuesday, May 26, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Cheryl Huffman, Chair, Cyndy Hayworth, Patti Eckard, Frank Forde, Adam Marshall, Sarah Wood, Jeff Nimmer. Planning Department staff were: Nicole Smith and Jennifer Schneier, City Attorney's Office. Laura Blackstock was in attendance as an alternate, if needed.

Chair Huffman called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Ms. Eckard moved approval of the April 27, 2015 minutes, as submitted, seconded by Mr. Forde. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Nicole Smith was sworn in as to her testimony related to cases during the meeting.

**CONTINUANCES/WITHDRAWALS**

Nicole Smith stated that there has been a request that BOA-15-13 be continued.

Chair Huffman asked if there was anyone wishing to speak on this request.

Henry Hillgardner, 303 Laurel Hill Drive, Burlington, N.C., representing the applicant was sworn in and stated that he is the real estate agent for the applicant concerning the sale of this property. The property owner is currently living in Florida. They are asking for a continuance because they have been waiting for a final easement release. One utility, the AT&T lines were not marked properly and now they are in a holding process for release of that particular utility. Verification and a locator was re-ordered on the 13<sup>th</sup> and that has been put on a 10-day schedule to be performed. They are still waiting for that service to go out and perform the location and confirmation of whether or not there is a utility in the ground, which is the basis of having the easement vacated.

Nicole Smith stated that as part of the real estate transaction, there is a bank that requested confirmation that the structure was not located in the utility easement. That is the purpose of the locating services. Prior to this evening, staff is of the opinion that the easement would be released last Wednesday at the Planning Board level, but that did not occur, so staff is in support of the requested continuance.

In response to a question by Chair Huffman regarding the legal issues of the owner not being present or represented by an attorney, Counsel Schneier stated that the applicant has asked this gentleman to appear as her agent to speak for her. This request would have to go to the Planning Board first to get an easement release before coming to the BOA to be heard.

Mr. Forde moved that this matter be continued to the June 22, 2015 meeting, seconded by Ms. Eckard. The Board voted unanimously in favor of the continuance.

### OLD BUSINESS

None.

### NEW BUSINESS

#### VARIANCE

- (a) **BOA-15-12: 2179 SCOTT ROAD** Larry McNeal requests a variance from a minimum side street setback requirement. **Variance:** A proposed detached building will encroach approximately 10 feet into a required 15-foot side street setback adjacent to Rudd Station Road. Section 30-8-11.1 and Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street - Rudd Station Road. **(GRANTED)**

Nicole Smith stated that a proposed detached building will encroach 7 feet into a 15-foot street setback adjacent to Rudd Station Road. The property is located at the northwestern intersection of Scott Road and Rudd Station Road and is zoned R35, Residential Single-family. It is approximately 0.65 acres which is 28,314 square feet. The lot is a corner lot with two adjacent street frontages. It has frontage along Scott Road and Rudd Station Road. The lot is an odd shaped property. The rear lot line is much shorter in length than the front and side lot lines. The property contains a septic area and a septic repair area in the front section of the lot. When the house was built, its location was best determined based on the septic requirements for the property. Also, detached structures may not be located in front of the front building line of the principal structure. Annexation records indicate the property was annexed into the City effective June 30, 2004. Guilford County tax records indicate the house was built in 2007. The lot contains a single family dwelling. There is an existing concrete pad located behind the house in the northeast corner of the property which is the area the applicant proposes to construct his detached storage building. The applicant has mentioned there is one significant tree located to the west of the proposed area for the building and the intent is to preserve the critical root zone concerning the tree. The detached building is proposed to be a one-story building approximately 8 feet tall, 16 feet x 32 feet in size containing 512 square feet. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Huffman asked if there was anyone wishing to speak on this matter.

Larry McNeal, the property owner, was sworn in and stated that he had the house built in 2007 and had to set the house back on the property because of a septic area and the repair field all had to be in the front location. It is in the City but there is no sewer hookup there so he had to install a septic system. There is City water connected to the property from Scott Road. The only location he can place the storage building is in the area indicated on the maps provided. The lot lines on

the left side from the corner of the property to the house is on 25 feet and on the other side it is longer, at an angle. When he had the house built he put the slab at the corner for a future building and had it all graded so the water would run off on both ends of the house and not accumulate at the rear of the house. If he has to move the slab and building over he would have to move it forward too, because of that angle. There is also a covered patio at the rear of the house and the location of the slab and building would make it right up against that patio. He would ask that the Board members grant the variance so that he can move forward with his plans.

Ron McNeal, 5803 Grove Station Road, an adjacent property owner to the rear, and a brother to the applicant, was sworn in and stated that he does not have any objection to his brother's plans for the property. He feels it is in a good location.

There being no other speakers, the public hearing was closed by unanimous vote.

### **Board Comments:**

All the Board members indicated their support of this request as it appears to be a very reasonable request.

Ms. Hayworth moved that in regard to BOA-15-12, 2179 Scott Road, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because based on existing infrastructure and the septic requirements, the proposed location is the most reasonable location for the building. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because this property is a corner lot with more restrictive setbacks than interior properties. The hardship results from the application of this Ordinance to the property because this location will best serve the property and also preserves a significant tree located to the west on the property. The hardship is not the result of the applicant's own actions because the lot is a corner lot and the rear portion elevations for the lot moderately change in the north direction. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because there is not intent to violate the spirit of the Ordinance and protection for the character of the neighborhood is intended. The granting of the variance assures the public safety and welfare and does substantial justice because granting this variance will pose no harm to the public, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Forde, Nimmer, Eckard, Marshall and Wood. Nays: None.)

- (b) BOA-15-13: **1710 THREE MEADOWS ROAD** Pamela Bennett requests a variance from a minimum side setback requirement. **Variance:** An existing attached garage encroaches 8.8 feet into a 10-foot side setback. Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Pheasant Run Drive. **(CONTINUED TO JUNE 22, 2015 MEETING)**

- (c) BOA-15-14: **3 ARTA LANE** Lita White request variances for an existing detached accessory building to encroach into a rear setback requirement and for a proposed attached room addition to encroach into a rear setback. **Variance #1:** An existing detached storage building is located zero feet from the rear lot line. It is required to be a minimum of 3 feet from the rear lot line. Section 30-8-11.1. **Variance #2:** A proposed attached room addition will encroach 2 feet into a 15-foot rear setback requirement. Table 7-2. Present Zoning-R-7 (Residential Single-family) Cross Street-Glendale Drive  
**(GRANTED)**

Lita White requests variances for an existing detached accessory structure to be located too close to a rear and side setback and for a proposed attached sunroom to encroach into a rear setback requirement. The property is located on the eastern side of Arta Lane north of Glendale Drive and is zoned R-7 (Residential Single-family). On March 18, 2015, the applicant applied for a building permit for the proposed sunroom addition. The planning reviewer noted that an existing carport was too close to the house and the side lot line, that there is an existing detached storage building too close to the rear and side lot lines as well as the proposed sunroom addition would not meet the required rear setback. Guilford County tax records show the house was originally built in 1985. There are no building permit records on file for the property. Previous development Ordinances did not permit the carport location or the detached accessory building location. There will be two motions for these requests with the first one being the detached storage building. The detached storage building is one-story and contains approximately 96 square feet. It is required to be 3 feet from the side and 3 feet from the rear. It is currently located 2 feet from the side and zero lot on the rear. The other motion and request will be for an attached sunroom addition. It is proposed to be 13 feet from the rear setback instead of 15 feet as required. There is an existing deck/screen porch attached to the rear of the house and the applicant wants to add two more feet onto the screened porch and enclose to a sunroom addition. The lot is rectangular shaped with a slight angle on the rear and side lot line. There is a large amount of open space and flood plain land located directly east of the applicant's rear lot line. The R-7, Residential Single-Family District is primarily intended to accommodate low to moderate density single-family detached residential development. The overall gross density in R-7 will typically be 7.0 units per acre or less.

Chair Huffman asked if there was anyone wishing to speak on this matter.

Lita White, 3 Arta Lane, the property owner was sworn in and stated that she would like her contractor to speak for her.

Dewey Turentine, the applicant's contractor, 1603 Dunbar Street, was sworn in and stated that they wish to request a variance in order to add 2 additional feet to the existing screened porch on the property. They did not realize that the fence was over the property line and they would like to build a sizeable sunroom for the family to enjoy. The storage building was already in place when Ms. White bought the property along with the fence. She had the carport installed and it would need to be tweaked just 3 or 4 inches to bring it into compliance and that can be done with no problem. The proposed project will not impact any of the neighbors.

In response to questions by the Board members, Mr. Turentine stated that part of the screened porch will be removed. The floor system will remain and be reused but the sides, roof and walls will be removed. An existing window will be removed and a door installed to be able to access the sunroom from the house.

There being no other speakers, the public hearing was closed by unanimous vote.

**Board Comments:**

All Board members stated they support this request as the request appears to be reasonable.

Mr. Forde moved that in regard to BOA-15-14, 3 Arta Lane, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because the applicant will be unable to construct its desired sunroom and be forced to relocate the existing non-permitted storage unit. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the size of the lot is minimized due to the existing floor plain and open space located at the rear of the lot. The hardship results from the application of this Ordinance to the property because the setback requirements of the Ordinance would prohibit the construction of the sun room in its desired location. The hardship is not the result of the applicant's own actions because the flood plain area existed prior to the plat recordation and the limited area. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it allows for the continued use and updated improved use of the property. The granting of this variance assures the public safety and welfare and does substantial justice because it allows the applicant to use the property in an improved and existing manner, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Forde, Nimmer, Eckard, Marshall and Wood. Nays: None.)

In regard to Variance #2, the relevant findings were moved and seconded. The Board voted unanimously in favor of granting Variance #2.

**OTHER BUSINESS:**

**Considerations for Chair and Vice-Chair nominations for the June 22<sup>nd</sup> meeting**

Nicole Smith stated that the Board members should be giving consideration of the upcoming nominations for Chair and Vice Chair to be addressed at the June meeting. There are also two positions that are up for reappointment or new appointments pending and staff is hoping to have both members in place following the June 2<sup>nd</sup> City Council meeting. E-mail updates will be sent to Board members as to who is eligible to be elected as Chair or Vice Chair.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Cummings was acknowledged as excused.

\* \* \* \* \*



There being no further business before the Board, the meeting adjourned at 6:30 p.m.

Respectfully submitted,

Cheryl Huffman, Chair  
Greensboro Board of Adjustment

CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
JUNE 22, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, June 22, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Cheryl Huffman, Chair, Cyndy Hayworth, Mark Cummings, Patti Eckard, Frank Forde, Sarah Wood, Jeff Nimmer. Planning Department staff were: Loray Averett and Nicole Smith and Jennifer Schneier and Terri Jones, City Attorney's Office.

Chair Huffman called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence

**APPROVAL OF MINUTES**

Ms. Eckard moved approval of the May 26, 2015 minutes, as submitted, seconded by Mr. Forde. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Smith, Richard Hawk, Police Officers Clarence Schoolfield, Michael Calvert and Charles Parker were sworn in as to their testimony related to cases during the meeting.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that staff is requesting that Item BOA-15-18, 2511-E Battleground Avenue be heard first on the agenda to allow Police Officers to return to duty. There is also an interpreter Present to help with the testimony of witnesses in this case. Mr. Forde made a motion to move the requested item to the beginning of the agenda, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion.

Mr. Nimmer stated that in regard to this item he wished to disclose that his employer owns the property directly to the south of this location but he does not feel this will have any impact on his decision making in this matter. Counsel Schneier stated that if it does not have any financial impact he would not have to be recused from this matter.

**APPEAL OF REVOCATION OF GREENSBORO PRIVILEGE LICENSE**

- (a) **BOA-15-18: 2511-E BATTLEGROUND AVENUE** Ben Klein, Attorney At law, on behalf of Feng Li, appeals a revocation decision by the City Tax Collector of the Privilege License for May-Spa located at 2511-E Battleground

Avenue. The business is licensed for Personal Service Massage Therapists; however, it was determined the business operates in violation of Section 14.5 of the City Code of Ordinances, specifically massage therapists are employed whom are not licensed in accordance to City Ordinance and State General Statute requirements. City Code of Ordinances Section 13-48 (Board of Adjustment Authority), Section 14.5 (Massage and bodywork therapy) and NCGS 90-620, Present Zoning-CM (Commercial-Medium), Cross Street-Oakcrest Avenue. **(APPEAL GRANTED)**

Loray Averett stated that the applicant through his attorney appeals the revocation of his privilege license for May Spa. The business is licensed as a Massage Spa Service and has been determined that it operates in violation of the Code of Ordinances in conjunction with the regulating North Carolina State Statute. The applicant has requested an interpreter and staff will provide interpreter services for the applicant. The property is located on the west side of Battleground Avenue north of Oakcrest Avenue and is zoned C-M (Commercial-Medium). Massage Therapist are permitted in the CM zoning district with regards to the Land Development Ordinance including specific language that defines when any massage establishment is expressly prohibited as described in the Ordinance reference section as described above. City records reflect that on or around June 10, 2012, the applicant applied for a privilege license and was approved to operate a massage spa at this location. Since that date, there have been recurring inspections with follow up comments about each inspection. One inspection in particular that was done on December 6, 2013 noted the business was in violation because there was a staff person performing a massage that was unlicensed.

Ben Klein, attorney representing the applicant, stated that he objected to Exhibits or references to any occurrence in 2013. Chair Huffman noted his objection.

Loray Averett continued by saying that the applicant, agreed to comply. There is no revocation of the license unless the violation occurs twice within a twelve month rolling period. Various on-site inspections continued and on or around May 6, 2015 another Notice of Violation was issued concerning unlicensed staff performing massages. On or around May 7, 2015, the applicant visited the City Privilege License Section and agreed to comply with massage therapy licensing requirements. On or around May 13, 2015 another inspection was made. The inspection determined an unlicensed staff person was performing massage therapy on a client. A second Notice of Violation was issued, along with a privilege license revocation notice. On May 14, 2015, a revocation letter to cease the massage business operations located within the City limits of Greensboro was issued to the applicant at his 2511-E Battleground Avenue location. On May 14, 2015 the applicant appealed the decision of the Deputy Tax Collector. The C-M, Commercial-Medium District is primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks

Chair Huffman asked if there was anyone wishing to speak on this request. All speakers were sworn in for their testimony related to this matter.

Counsel Jones, City Attorney's Office, called staff witnesses for their testimony.

Richard Hawk, Deputy Tax Collector and Assistant Manager of Collections for the City of Greensboro, was sworn in and in response to questions from Counsel Jones, stated that he has been employed by the City for approximately 2 years. His job responsibilities include the Payment

Processing Section, Business Privilege License and Delinquent collections and he helps supervise that department. A privilege license was issued to the appellant, Feng Li for the business known as May-Spa, located at 2511-E Battleground Avenue and was originally issued in May of 2012. The business license covers the use as a massage business. The requirements by the City for massage establishments are as follows: any business corporation, LLC, LLP, or sole proprietor that hires an employee, or people who perform massage therapy, would need to obtain a business license for a massage business. With a massage business, the City makes sure that they follow the proper guidelines according to Code; they make sure that the City has a record and a list of any employee giving massage there; proof of their license; proof of North Carolina issued state Identification or license; address, phone number, as well as they do a background application for the owner of the business or anyone who has a vested interest in the business during the application so all that is on file and that they are following Code, which is Chapter 14.5 of the Code of Ordinances. These regulations are attached to the staff report as Exhibit 7, 8 and 11. A Massage Therapy license issued by the North Carolina Board of Massage Therapy is what he has referred to. That license allows them to perform massage, legally, in the state of North Carolina on individuals. Persons who do not have the required license, are not allowed to perform massages on anyone in the City of Greensboro. The state regulations are attached to the staff report as Exhibit 9. May-Spa has been inspected approximately 7 times for compliance with the City's Ordinances.

Counsel Ben Klein objected to this testimony due to relevance. In erring on the side of preserving the record on appeal, he is doing everything he can to preserve that record. If there is any evidence of events prior to 2015, he would argue that would be outside the scope of this hearing, and certainly outside the scope of what the Board is here to decide, which is, that there are two (2) violations within a one (1)-year period of time. So his objection is to relevancy. He is concerned that if he does not object, he would be facing that issue in front of a Superior Court judge.

Continuing his testimony in response to questions posed by Counsel Jones, Mr. Hawk stated that he issued a Revocation letter labeled as Exhibit 1, and attached to the staff report. He also issued a Notice of Violation labeled as Exhibit 3, attached to the staff report. Both were issued because the business was in violation of Section 14.5 of the City Code of Ordinances as an unlicensed massage therapist was performing massage at the location. On May 6<sup>th</sup>, 2015, he observed at the business location, during a site visit he concluded that two (2) unlicensed employees were performing massage on customers at the location. Upon entry into the establishment and after speaking to one of the employees, an employee came out of the massage room, (unlicensed, not state licensed massage employee), where a customer was receiving a massage and the customer was laying there, draped, however unclothed, and the massage therapist was the only other person coming out of the room, as well as the massage therapist had massage oil on her hands. Upon talking to the massage therapist and the other unlicensed massage therapist, he concluded that they did perform a massage and later it was determined that this person did not have a massage license. Those individuals identified themselves to him as Jinrong Chang and Fengyan Yu. Neither person provided a valid North Carolina driver's license or identification card, which is a requirement of the City's Ordinance. They also did not provide a current North Carolina State Massage license. There was one (1) person on-site that day, Qian Lin, that is on the license as a Licensed Massage Therapist. An employee list is provided which details anyone who is giving massage at that location and it has their name, address a North Carolina driver's license or I.D. number, phone number, and attached to that is proof of an active status of the North Carolina Massage and Body Therapy License. Individuals that are licensed through the state to perform massages are required to display their licenses in the establishment. This is also a requirement of

the City Ordinance and the licenses were displayed at the location on the wall behind the front counter. One (1) of the individuals was present at the location that day, May 6<sup>th</sup> 2015, and that was Qian Lin. He did not see her perform any massages that day. He was accompanied to the location on May 6<sup>th</sup>, 2015 inspection by Officer Schoolfield and Calbert. The reason he was accompanied by these Officers was for his safety and security during these inspections. He met with Mr. Li, the appellant, after the May 6<sup>th</sup> Notice of Violation was issued. A written statement was received from Mr. Li which was provided on behalf of May-Spa and the statement mentioned that they understood that they are not allowed to hire employees to perform massages that are unlicensed in the state of North Carolina. No one provided language interpretation services to anyone during that meeting. Mr. Li's niece, Melody Wang, came with Mr. Li to the meeting and acted as interpreter and did the translating for Mr. Li. He was able to speak some English back and forth with Mr. Hawk but Melody Wang did the translating as well as speaking with Mr. Li. Exhibit 4 is the statement agreement that Melody Wang wrote out and translated during the meeting. Mr. Li signed the statement.

A second Notice of Violation and a Revocation was issued for that location and labeled as Exhibit 5. This Notice of Violation and Revocation were issued because the business was in violation of Section 14.5 of the City Code for an unlicensed massage therapist was performing massage at this location and it was the second Notice of Violation within a rolling 12-month period per Section 14.5.5(b), in the City Code of Ordinances that constituted revocation of the license. On May 13<sup>th</sup>, 2015, during a site visit and a walk-through of the location, he observed the unlicensed employee, Young Lu, performing massage. He was standing outside the door and the door was opened by employee, Qian Lin, and he could clearly visualize approximately five (5) or six (6) people and the unlicensed employee was massaging the shoulders and upper chest of a customer.

In regard to the layout of the business located at 2511-E Battleground Avenue, as soon as you walk in the front door, there is a small lounge area to the right, which consisted of a couch and possibly a chair or loveseat and a coffee table. On the left side there is the front desk and behind the front desk is a wall which has some bottles and also the business license as well as the massage licenses posted on there. As you are walking from the front door there is a hallway which has a moveable divider, like a cloth or shower curtain-type where you can slide it over and as you walk down the hall, the massage rooms are on the left and right side of the business. At the end of the hall there is a laundry-type room with a break room at the very end. When you walk into the front door you cannot see the massage rooms. He was led through the business by the employee of the May-Spa, Qian Lin. The person that he observed on May 13<sup>th</sup>, 2015 performing massage on a customer, provided an identification card, but did not provide a current North Carolina State Massage License. Officer Parker and Marsh accompanied him on his inspection visit on May 13<sup>th</sup>, 2015. In revoking the privilege license he relied on the results of the site visit and what he witnessed and because it was the second Notice of Violation in the 12-month rolling period, per the Code 14.5-5(b), in the Code of Ordinances it constitutes revocation of the license if a second Notice of Violation is issued. Mr. Li appealed the revocation in a timely manner. The form and letter labeled as Exhibit A, attached to the staff report, constitutes his appeal. Section 13-48 of the City's Code of Ordinances governs revocation of privilege licenses. That Section is found in Exhibit 8 and is attached to the staff report. If the Board of Adjustment upholds the revocation, a massage establishment can be operating at 2511-E Battleground Avenue, but after the period of revocation, there would be a waiting period of at least six (6) months, thereafter, that any massage business would have to wait until they began a business at that exact location, and that is per Chapter 14.5 of the Code. Mr. Li could operate a massage establishment at another location within the City of Greensboro, however, he would not be able to do that at this time, because for any applicant of a massage business in the City of Greensboro, they would not have

had a license revoked or denied within three (3) years preceding the date of the application. The City will be issuing privilege licenses after June 30<sup>th</sup>, 2015, for businesses that conduct beer and wine sales, as well as taxi cab duties, however, they will be issuing a business permit for massage businesses, specifically. Preceding decisions based on privilege licenses of massage businesses, would carry over and would be viable during the business permit portion, effective July 1<sup>st</sup>, 2015. Counsel Jones stated that she had no further questions.

Chair Huffman asked Counsel Klein if he wished to cross-examine the witness.

Ben Klein, attorney representing the applicant, asked questions of the witness and the following are the responses made by the witness: Mr. Hawk responded that he did not cite the statute directly by number.

Counsel Klein stated that he was referring to North Carolina General Statute, Exhibit 9, Section 90-622-5, "Definitions. "Practice of massage and bodywork therapy to any person for a fee or other consideration." Counsel Klein then referred to Exhibit 6, "copies of City Privilege License records that contain notes concerning inspections and other communications with the applicant." He asked Mr. Hawk if this came from his office and Mr. Hawk confirmed that it did and he created portions of the Exhibit. Other people have added to this documentation. Mr. Hawk verified that all of his notes are included in this Exhibit. He verified that he took those notes when the events were fresh in his mind on that day within a couple of hours after the inspection visit on May 6<sup>th</sup>, to May-Spa. Counsel Klein brought Mr. Hawk's attention to the notes concerning May 6<sup>th</sup>, 2015, and asked where it says that he say someone come out with oil on their hands? Mr. Hawk stated that the notes did not say that. Counsel Klein stated that was an important fact and pointed out that Mr. Hawk had testified to that before the Board today, as the basis of forming his opinion that somebody was giving a massage at May-Spa. Mr. Hawk stated that it did not base the formal opinion. He still believes that someone can give a massage without having oil on their hands. He mentioned it to the Board to better explain his testimony. Counsel Klein asked Mr. Hawk why he did not also write in his report that he spoke with the individuals that were unlicensed that day? Mr. Hawk responded that the report does not directly talk about dialog back and forth with the employee. Counsel Klein stated that Mr. Hawk specifically cites the two (2) people. Mr. Hawk said that he did speak with two (2) employees that day. Counsel Klein asked if Mr. Hawk felt that those conversations were important? Mr. Hawk responded that it did not change what he was there for or what he noticed while he was there. Counsel Klein asked where in the report does it say that Mr. Hawk saw somebody get a massage that day, anybody? Licensed or unlicensed? Mr. Hawk stated that in the comment sections it does not say that he saw someone giving a massage that day. Counsel Klein stated that Mr. Hawk based the assumption that there was somebody giving a massage on the fact that, or at least one (1) of the facts that individual had massage oil on their hands. Mr. Hawk stated that is not solely the reason, but it possibly is one of the reasons. Counsel Klein then referred to Exhibit 4, and asked where in that Exhibit does it say that Mr. Li admits to hiring an unlicensed massage therapist? Mr. Hawk responded that it does not state that in this Exhibit.

Counsel Klein then referred to May 13<sup>th</sup>, 2015, on Exhibit 6 and stated that Mr. Hawk's notes for that date indicated that there was a unlicensed therapist giving a massage, in which it is alleged today that that massage was being done on the individual's upper chest and shoulders. Mr. Hawk confirmed that was correct. Counsel Klein asked why that was not in the report for that date. Mr. Hawk stated that it is not in the notes in the system, that is correct. Counsel Klein pointed out that it also says that Mr. Hawk actually has some sort of confrontation with this customer, which Mr. Hawk confirmed as correct.

Counsel Jones objected to the word "confrontation". Counsel Klein stated he would strike that from the record. He would like to say, "interaction". He stated that the record indicates that there was an interaction with a customer, which Mr. Hawk confirmed as correct. Counsel Klein stated that, specifically, the customer that Mr. Hawk had testified that the customer was getting a massage from Ms. Liu, and Mr. Hawk confirmed that was correct. Mr. Hawk did not have a reason to ask the customer his name and no affidavit was obtained from the customer. He also did not know how much the customer paid for the massage nor what means he used to make a payment. Counsel Klein stated that Mr. Hawk assumed that the customer pays in advance for a massage and Mr. Hawk confirmed that was correct. Counsel Klein asked Mr. Hawk if he could specifically tell the Board the details of his conversation. Mr. Hawk responded that as the customer was walking out and exiting the door, he asked the customer if he received a massage, in which the customer responded, "yes", and Mr. Hawk asked, "From who?" and the customer answered, "That female right there." as he pointed to Yan Liu. Then the customer left the business in a hurry. Counsel Klein stated that conversation was listed in the report, which was confirmed by Mr. Hawk. Counsel Klein then asked Mr. Hawk to view page 2 of 3, of Exhibit 6, under October 7, 2014, at 3:41 p.m. and asked if the business was found to be in compliance. Mr. Hawk confirmed that was correct and the initials "RKH" were for him. Counsel Klein asked Mr. Hawk if on May 13<sup>th</sup> or May 6<sup>th</sup>, he had spoken to Mr. Li? Mr. Hawk stated that he did not speak to Mr. Li that day as he was not at the location. Mr. Hawk explained that Mr. Li came to his office on May 7<sup>th</sup> with his niece, Melody Wang and he had conversations with them on that date. Those comments are noted under the 5/7/15 notes at 12:21 p.m. Counsel Klein asked if anywhere in those notes does Mr. Li admit to hiring anybody who is an unlicensed massage therapist? Mr. Hawk confirmed that was correct, not directly, however they did state that moving forward they would be sure anyone they employed has a proper licensure. Counsel Klein stated he had no further questions.

Chair Huffman asked if the Board members had any questions for Mr. Hawk.

Ms. Hayworth asked if a person can receive a massage license without a proper North Carolina issued photo I.D.? Mr. Hawk stated that they must have a photo I.D. but it does not have to be issued by the state of North Carolina. It could be issued in another state. On the May 13<sup>th</sup> visit, Yan Liu did have a North Carolina issued driver's license for I.D. Ms. Hayworth then asked about Exhibit 4, and wanted to know why Mr. Li's appeal was written on City of Greensboro stationary and asked if staff had written the appeal for him? Mr. Hawk stated that he did not write the appeal for Mr. Li, but he gave him some paper to write on and his associate, Melody Wang wrote the appeal. They did not come in with an appeal already written.

Counsel Jones stated that as clarification, Exhibit 4 is not the appeal but it occurred after the first Notice of Violation and before the second. It was a statement he provided.

Mr. Forde asked how many massage businesses there are in Greensboro? Mr. Hawk stated that there are approximately 35 or 36. Mr. Forde then stated that Mr. Hawk's office does about 140 – 130 inspections per year on these establishments? Mr. Hawk stated that they do not do that many. Staff does not visit all the massage establishments at the same time, they switch them up and do ones that have had previous Notices of Violation, just due to the pure volume they would not be able to do all the massage businesses every quarter. Mr. Forde stated that it seems like this business was visited 10 or 15 times in a two year period. Mr. Hawk stated that he thought there were seven (7) and from the first time he went and he did issue a Notice of Violation December of 2013. Mr. Forde stated that Mr. Hawk issued the violation on Wednesday the 6<sup>th</sup>, and Mr. Li comes in on the 7<sup>th</sup> or the 8<sup>th</sup>, and asked Mr. Hawk if Mr. Li knew that he could appeal

that violation? Mr. Forde pointed out that in the past, applicants have appealed the 1<sup>st</sup> violation and the appeal was overturned and that is not a violation. So when they get their 2<sup>nd</sup> violation, the 2<sup>nd</sup> violation then becomes the 1<sup>st</sup> violation. His question is; does staff tell them when they get their 1<sup>st</sup> violation that they can appeal that violation? Mr. Hawk responded, no. Mr. Forde then stated that when Mr. Li came in the 2<sup>nd</sup> time to talk about the 2<sup>nd</sup> violation, he was asked whether he wanted to appeal the 2<sup>nd</sup> violation? Mr. Hawk stated that he asked Mr. Li if he wanted to appeal the revocation of the privilege license, he did not ask him if he wanted to appeal the actual violation. An appellant has 3 days to correct the violation.

Mr. Cummings referred to the notes in Exhibit 4 concerning the notes, because in looking at the difference between the 6<sup>th</sup> and the 13<sup>th</sup>, the 13<sup>th</sup> looks like it has more detail than the 6<sup>th</sup>. He assumes that when Mr. Hawk does these notes, he is trying to convey what he saw. Mr. Hawk responded that was correct, and normally, the general situation that happened, the reasons for any actions that were taken during that day and any additional notes that are felt to be pertinent to what is going to happen moving forward or what their status is as a business at that time. Mr. Cummings stated that using the word "pertinent" that means things that Mr. Hawk thinks will be important to put in the staff report. Mr. Hawk confirmed that was correct. Mr. Cummings asked that the notes talk about Mr. Hawk talking to a customer, but nothing is mentioned in the 6<sup>th</sup> notes. Mr. Hawk stated that he does not feel that the 13<sup>th</sup> is any more detailed than the 6<sup>th</sup>, other than the discussion of the revocation. Mr. Cummings stated that on the visit of the 6<sup>th</sup>, Mr. Hawk stated that there were 2 people giving a massage and Mr. Hawk confirmed that was correct. Mr. Cummings asked if Mr. Hawk saw customers coming from the massage rooms and Mr. Hawk stated that he saw them come out of the room. He saw them in the room and saw them coming out of the room. Mr. Cummings asked if Mr. Hawk talked to those 2 individuals that came out of those rooms on the 6<sup>th</sup>? Mr. Hawk stated that he did not speak to the customers on that day. Mr. Cummings asked what Mr. Hawk based his decision that they were getting massages? Mr. Hawk stated that they came out and during normal conversation with Qian Lin as well as the two other workers, Qian Lin stated that they were practicing, and if they are practicing, they are doing a massage and they just got here. He did not know what they meant by that. Mr. Cummings pointed out that there was a language barrier between Mr. Hawk and the individuals that were there on both days? Mr. Hawk stated that was correct. There has always been a slight language barrier, not as much with Qian Lin, who was the licensed employee that was there, but more with the employees that were unlicensed that were there. Mr. Cummings asked if Mr. Hawk speaks Chinese and Mr. Hawk stated that he did not. Mr. Hawk stated that both of the individuals would not speak at first, but they did try to communicate with him later on. Mr. Cummings asked Mr. Hawk to point him toward the City Ordinance or State Statute that requires a North Carolina I.D. for a person who is allegedly providing that service. Mr. Hawk stated that Exhibit 7, Article 11, Section 14.5-4 on page 3 of 5, under "e" Mr. Cummings cited the Section as follows: "Any person or entity applying for a massage business privilege license shall also be required to submit with the license application their North Carolina Employer I.D. number and a list including the name, address, home telephone numbers and North Carolina driver's license number or picture ID issued by the North Carolina DMV of each and every employee, contract worker or hiree who is to perform massage or bodyworks therapy . . ." Mr. Hawk confirmed that was correct. If an individual is not employed or performing a massage, then they would not need to provide that information. If they are a secretary or accounting person that works with the business, then they would not need to provide that information.

Chair Huffman pointed out that the reports indicate that there are quarterly inspections that are performed at different times, she asked if Mr. Hawk had a general rule that all massage places are done every quarter? Mr. Hawk stated that normally they do a handful per quarter, on average.



And they only follow-up if there have been violations. They would normally do a follow-up very briefly after a very short time. Chair Huffman stated that his intent is simply to fulfill the obligations and the requirements in the statutes which are, in fact, that they have licenses in order to do this business. Mr. Hawk confirmed that was correct. Chair Huffman asked that in Exhibit 4, the statement signed by Mr. Li, what was Mr. Hawk's intention for doing that? Was it simply to inform him that Mr. Hawk just wanted to be sure that he is following the rules and the laws, and wanted to make sure that he knew what he was doing, as far as the business is concerned. Mr. Hawk confirmed that was correct and his intention was to be helpful. Chair Huffman asked Mr. Hawk on what day he witnessed the massage. Mr. Hawk stated that was May 13<sup>th</sup>, 2015, and he physically saw it. Chair Huffman stated that it was the earlier offense on May 6<sup>th</sup>, that the employee admitted to and Mr. Hawk confirmed that was correct. Both employees verbally told him that they just gave a massage.

Counsel Klein objected to that for preservation of the record. Mr. Cummings asked Counsel Klein to state the basis for his objection for the record. Counsel Klein stated that was not his recollection of the testimony and in terms of housekeeping, he apologized as this process is new to him, but to the extent that the witness was being rehabilitated, he would just make a standard objection based on that.

Chair Huffman stated that the Board does not rehabilitate witnesses here, the Board sticks to facts and they do not need any additional rehabilitation, just stick to facts. How a customer paid makes no difference to the Board whether they were or were not licensed. Chair Huffman asked Mr. Hawk about all of his notes and if everything in his notes did not show everything in his notes. Mr. Hawk stated that he did not include everything in his notes.

Ms. Wood asked how long it takes to get a massage license in North Carolina and where does a person get their training? Mr. Hawk stated that he does know that a person has to go to a certified school, which Raleigh and their Board deems as certified through whatever their process is. He knows that it takes a significant amount of time, upwards of one (1) year, but some people, depending on the schooling and depending on how their program is set up and they may do a non-direct method and it may take them a couple of years. Some people may do a direct method and may be in a day-long massage school every day. He knows it still, at a minimum, takes what he believes to be close to a year. Ms. Wood stated that Mr. Hawk had stated that one or both of these ladies had just gotten "here" and asked what that meant? Where is "here" and where had they gotten here from? Is that the United States, Greensboro, the business? Mr. Hawk stated that he does not know, he assumed that they meant the business and he did not make any direct assumptions. He does not know where they traveled from to come to May-Spa. He can only assume that "here" at that present day meant May-Spa, he cannot speak to any other details regarding where they went or came from.

Mr. Nimmer asked Mr. Hawk to clarify what a 12-month rolling period is and how it is calculated. Mr. Hawk stated that a 12-month rolling period would be a set of 12 months that would depend on issuance of a Notice of Violation, so if it was issued on May 6<sup>th</sup>, of 2015, then it would be calculated for 12 months from that date. If within that 12 months there was a 2<sup>nd</sup> Notice of Violation issued, that would be within that 12 month rolling period. Mr. Nimmer then asked for clarification of the business being in compliance at the end of 2014 and then in May they were no longer in compliance. Mr. Hawk stated that, for example, they were issued a Notice of Violation in December of 2013, for having unlicensed masseuse, and so 12 months rolled past from the time that violation was issued with no violations and they were in compliance. So lack of a better term, their slate was wiped clean after that 12 months. So then they effectively had no Notice of

Violations on file. Mr. Nimmer pointed out that the recent violations happened within, basically, a week of each other. Mr. Hawk confirmed that was correct.

Mr. Cummings asked if Mr. Hawk if he had any knowledge if the two (2) individuals on the May 6<sup>th</sup> inspection were licensed in another jurisdiction? Mr. Hawk stated that he did not know, that would have no relevance to the Greensboro Code, so he did not know. He only knows that they were not licensed in North Carolina but he cannot speak to other jurisdictions. Mr. Cummings stated that the statute does allow individuals from a license in another jurisdiction under certain circumstances, to perform services in the state of North Carolina. Mr. Hawk stated that was not true. They must be licensed in North Carolina to perform services within the state of North Carolina. Mr. Cummings stated that on 90-624, Exemptions, Subsection 3, and pointed out that there are exemptions to when an individual has to be licensed. Mr. Hawk confirmed that was correct. Mr. Cummings asked if any person can be licensed from another jurisdiction and still perform services in this state under certain circumstances? Mr. Hawk stated that he did not check every state or jurisdiction on their licensure, however, based on the Notice of Violation, they do have a 3-day period where they can correct the Notice of Violation. That would have been where they could have said, "They are licensed, this is exempt per state statute and here is our basis." They did not present that evidence. Mr. Cummings asked if that information does appear on the violation notice and Mr. Hawk stated that it does on Exhibit 3, about  $\frac{3}{4}$  of the way down the page where it says, "**1<sup>st</sup> NOTICE OF VIOLATION:** To avoid additional enforcement actions, including a **2<sup>nd</sup> NOTICE OF VIOLATION** and potential **REVOCAION** of license, as listed in Sec. 14.5-5 of the City Code of Ordinances, you must correct the violation(s) and present this **NOTICE OF VIOLATION** to the City Collections Office within **3 business days of the date written below.**" Mr. Cummings asked what it means when it says, "correct the violation(s)"? Correct the record or if you disagree with an application or do you agree with the facts of the violation? Mr. Hawk stated that it says that you must correct the violation and present this notice to the City Collections Officer within 3 business days, so it depends on the violation as how they could potentially make a correction.

Mr. Cummings then asked if Mr. Hawk, during his investigation, had any evidence that they are not licensed in another jurisdiction? Mr. Hawk stated that he did not check other jurisdictions other than North Carolina. Mr. Cummings then stated that the statement had been made that one of the ladies at the business had made the comments that someone was teaching someone or someone was learning something. Mr. Hawk stated that she had stated that she was practicing.

Chair Huffman asked if it would matter if they were licensed in 48 other states if they are not licensed in the state of North Carolina? And if they do not have a driver's license in North Carolina, they cannot get their license, correct? They cannot perform their service here, is that correct? Mr. Hawk stated that was correct. NCDMV would have to issue a North Carolina state driver's license or identification card for them to get their massage bodywork therapy license.

Mr. Forde pointed out that under the Exemptions, number 4 states: "Students enrolled in a Board-approved school while completing a clinical requirement for graduation that shall be performed under the supervision of a person licensed under this Article." He asked if any of those people who were unlicensed were in school to become a licensed massage therapist and if they were, there was a massage therapist there that was licensed? Wouldn't that have, technically, could have been an excuse for that? Mr. Hawk stated that they were not at a Board-approved school. Mr. Forde pointed out that it says, "enrolled in a Board-approved school. . ." so he feels that they may have been practicing their craft before they get their license and are allowed to do that. That is an exception to the rule.

Ms. Wood asked Mr. Hawk, in regard to the Exemptions, number 4, and a person practicing massage, was there anyone else in the room with the person giving the massage? Or did someone else come out of the room that could have been supervising someone giving a massage? Mr. Hawk stated that he only saw the one person giving the massage.

Chair Huffman stated that Counsel Jones had other witnesses to call.

Counsel Jones called Officer Clarence Schoolfield who was previously sworn in. In response to questions posed, Officer Schoolfield stated that he has been employed by the Greensboro Police Department for a little over 24 years. His job responsibilities that are relevant to the inspection that he accompanied Mr. Hawk on include meeting Mr. Hawk at the May-Spa and stand by to maintain his security because they do not know who is going to be inside the facility or what is happening inside the facility. He has accompanied staff on other occasions through various years on inspections. They also have opportunity to maintain surveillance on different establishments in the City as Crime Stopper complaints come up. He was present at the inspection made on May 6<sup>th</sup> 2015, and he observed Mr. Hawk identifying himself and he identified himself as a Police Officer. He then stood off to Mr. Hawk's right as a cover and control position so he could look down the hallway to the back door of the establishment. Two (2) females came out of the room to the right side of the hallway and Mr. Hawk recognized one of the females and started talking to both of them. The question came up as to whether they were giving a massage and one (1) female said, no, she was giving a massage and the other girl was learning. Then the door to the left opened and another female came out and the first girl spoke up and stated that she was giving the massages because she was licensed. Officer Schoolfield asked if she was giving massages to both rooms, and at that point she would not talk to him any longer. He was unable to see anything else because his job was to stand by with Mr. Hawk and his job is to watch for weapons. They normally do not look into a room when they are doing an inspection because it is a privacy issue and he is not there to work a complaint on a specific person. When they work complaints or they are working an establishment, they do not involve coordinates. The driver's license that was shown to Mr. Hawk was run just to confirm that it was valid and the other two (2) females did not have a North Carolina driver's license, however, they came up with names and dates of birth which they were able to run through New York. Detective Calbert retrieved his mobile terminal to run this information and they were able to confirm as to the first appearance that the I.D. is correct. He left Mr. Hawk to go to the rear door until it appeared that he was almost finished and he came back up front and then they all walked out because he no longer had any business there. He goes to the rear door because they have had people run out of the rear door when Mr. Hawk goes in and announces himself. Typically, there is another detective outside at the rear of the business in case this happens. Once the inspection is completed they leave the premises. Counsel Jones stated she had no further questions.

Counsel Klein asked questions of Detective Schoolfield and he responded. Detective Schoolfield verified that he was only at the establishment for a security detail of the business and he was not there to conduct any type of investigation. Counsel Klein asked if Detective Schoolfield went beyond his scope when asking questions of the occupants of the building. Detective Schoolfield stated that he was within his scope to ask questions concerning identification. Counsel Klein asked if there was any notation in any of the paperwork provided by staff, that Detective Schoolfield may have made a note of? Detective Schoolfield stated that in regard to the amount of training, it is 500 hours, per the State-approved school. In regard to Exhibit 6, none of the notes listed are a result of his input. He was only there to observe when Mr. Hawk had contact with Ms. Lin. Typically, the licenses are displayed on the wall, about the same if you walked into an ABC

establishment. It is up to Mr. Hawk to verify whether those licenses are correct or not. Counsel Klein stated he had no further questions.

Counsel Jones called Officer Charles Parker who was previously sworn in and he responded to questions posed by Counsel Jones. Officer Parker stated that he is a Corporal Detective with the Vice Narcotics Division and has been with the Greensboro Police Department for 11 years. His job responsibilities with respect to inspections conducted by Mr. Hawk on behalf of the City are for security purposes. On this specific day, May 13<sup>th</sup>, he had accompanied Mr. Hawk for his security while he did a walk-through investigation at this establishment. He has been at this location on other occasions. On May 13<sup>th</sup>, he was initially assigned to the rear door area and parking lot and he did not go into the front of the establishment until after Mr. Hawk started his walk-through inspection. John Marsh was also present at the establishment that day. When he entered the front door Mr. Hawk and Officer Marsh were there and Mr. Hawk was interacting with the workers. He did not provide any assistance in confirming the identities of the workers. Counsel Jones stated she had no further questions.

Counsel Klein stated he had no questions.

Counsel Jones called Officer Michael Calvert, Detective with the Vice Narcotics Division who was previously sworn in and he responded to questions posed by Counsel Jones. Officer Calvert stated that he has been with the Greensboro Police Department a little under 10 years. He was on site for the May 6<sup>th</sup> inspection by Mr. Hawk and he observed a female that immediately wanted to distance herself from the establishment. She left and walked to the end of the shopping center and was on the phone. The first part of the interaction, he was not there for that, because he went outside and tried to get the one female that had left to come back into the establishment so he could talk to her. He provided assistance in confirming the identification of the persons who were present. He issued a laptop computer and as the women were giving their names and dates of birth, at first they could not present any form of identification, so at that point they tried to run the information the women had given them to see if they could confirm the information that they were giving. In using the name and dates of birth provided, he did not have good results at first, but he continued to talk to them and eventually one of the females was able to provide a driver's license that was an out-of-state identification. He does not look at the state massage licenses that are displayed. Counsel Jones stated that she had no further questions.

Counsel Klein posed questions to Detective Calbert, to which he responded that he did not see anybody giving a massage that day. Counsel Klein stated he had no further questions.

Counsel Jones stated that would conclude the City's case on Direct but she would reserve the right to present a rebuttal witness, if necessary.

Chair Huffman stated that since there were no other questions at this time, she would suggest that the Board take a 10 minute break.

(Thereupon, the Board recessed approximately from 7:05 p.m. until 7:20 p.m.)

Counsel Klein called Feng Li, the business owner of May-Spa, who was previously sworn in. Jeanette Jiu, an interpreter hired by the City, was also previously sworn in as to testimony made by the appellant. In response to questions posed by Counsel Klein, **Mr. Li answered through the interpreter and himself as follows:** Mr. Li identified himself and stated that he is the owner of May-Spa since approximately June of 2012. Before he was the owner of May-Spa he was a truck

driver for about 10 years and before he was a truck driver, he lived in China and was a manager of a hotel massage spa. He did that for about 30 years and he considers himself knowledgeable in the field of massage therapy. He does not have a North Carolina Massage Therapy license and he does not perform massages, he only owns the business. He employs two (2) people at May-Spa, and they are Qian Lin and Qiaoyun Zhang, known as Mimi.

Counsel Jones objected because she feels he is leading the witness and it is unclear if the witness is testifying, he is merely answering yes and no questions. She would object to the leading nature on Direct.

Mr. Cummings stated that with the language barrier here and in Court if there is a language barrier and an interpreter, some leeway is given in those instances.

Counsel Jones stated she still wished to object for the record.

Chair Huffman asked if Mr. Li could speak any English, at all. Counsel Klein stated that he speaks very little English. He cannot have a conversation with Mr. Li without the benefit of his niece, who speaks much better English. Chair Huffman asked if Counsel Klein could ask more open-ended questions, but she does understand his position.

In response to further questions of Counsel Klein, Mr. Li answered, through his interpreter that he is not present at May-Spa on a daily basis. He only visits May-Spa very seldom and may go for 2 or 3 days without being there. No one has the authority to hire and fire employees at May-Spa except himself. Mimi or Ms. Lin cannot hire or fire anyone. Ms. Lin is his wife. A citation was received for the business, May-Spa, on May 6<sup>th</sup> and on May 7<sup>th</sup> he and his niece, Melody, went to Mr. Hawk's office. At some time during that visit he signed something and he felt like he had to sign it. He felt that he needed to come down to Mr. Hawk's office to talk to him. He felt like the citation was serious. His intention was never to engage in any activity that could be perceived as wrongful conduct or conduct that was in violation of the law. Counsel Klein asked Yan Liu to stand up and Mr. Li stated that he did not know her before but he knows her now. He knows her now as a result of the 2<sup>nd</sup> violation and the process that it took to get here. He has never hired Ms. Liu and never paid her and does not think either of his two (2) employees have hired Ms. Liu, and his wife did not hire her. He now knows that Ms. Liu is a friend of Mimi's but he did not know that Ms. Liu came there for treatment or massage services. He did not know that Ms. Liu had a back condition. The customers walk in, themselves, for his business. Mr. Li has always paid taxes every year with regard to the operation of that business. It is his intention to conduct the business only in a legal manner. This is his only business he owns and he does not have any other businesses. He depends on this business to live and he takes pride in this business. He considers professional massage therapy a business. Counsel Klein asked Mr. Li, if the license is revoked and the business is taken away, how that would affect him and his family.

Counsel Jones objected because that question is not relevant to the revocation. Mr. Forde stated that he would like to hear Mr. Li's answer.

Mr. Li, through the interpreter, said that it would affect two (2) families because both families depend on this business to live, his family and Mimi's family. Counsel Klein stated that he had nothing further.

Chair Huffman asked Counsel Klein to focus on the license of the individuals and the violations at hand as those are the two (2) issues that the Board has to consider. Counsel Klein stated that he

would do so and ask Mr. Li about each violation. He then asked Mr. Li to focus his attention to May 6<sup>th</sup>, and asked if he was present at May-Spa on that date. Mr. Li stated, through the interpreter, that he was not there. He does not know who was performing massage therapy on May 6<sup>th</sup>. Counsel Jones objected to the question because there is no foundation that Mr. Li would have any knowledge of that. Mr. Cummings stated that he would like to hear the answer because just because you are not there does not mean that you don't know who is supposed to be there. Counsel Klein asked Mr. Li if Mimi and Ms. Liu were performing massage therapy on May 6<sup>th</sup>. Mr. Li, through the interpreter, stated that he was not present so he does not know. Mr. Cummings stated that this is Counsel Klein's case and he should have the opportunity to ask questions of his client. Mr. Cummings stated that he thinks what Mr. Klein is trying to get to is, the owner is charged with having allowed certain things to happen. What he is trying to establish is that the owner knew that he hired two (2) people and those two (2) people were licensed. And he thinks that is what Counsel Klein is trying to establish, that Mr. Li had no knowledge of the individuals who were there.

Chair Huffman stated that Counsel Klein said he was done and rested his case and she asked him if he wanted to Re-Direct on those two (2) items.

Counsel Klein asked Mr. Li to focus on the 13<sup>th</sup> and asked who was employed for May-Spa on that date. Mr. Li, through the interpreter, stated that he wasn't there so he does not know. Counsel Klein stated that Mr. Li should know that Mimi was employed by him on the 13<sup>th</sup>.

Counsel Jones objected as Counsel Klein is testifying for the appellant. Chair Huffman stated that Mr. Li has said that he does not know who was employed there on the 13<sup>th</sup>.

Counsel Klein stated that his purpose is not to offend the Board, but due to the language barrier, he feels that he has the right to rehabilitate his witness. Counsel Klein asked if on the 13<sup>th</sup> of May, both Mimi and his wife were employed by him as massage therapists? Mr. Li, through the interpreter, answer that, yes, Mimi, every day there are two (2) people in there and he knew that Mimi should be there on the 13<sup>th</sup>. Counsel Klein asked if the other person that was there on the 13<sup>th</sup> was his wife? Mr. Li, through the interpreter, said that was correct. Counsel Klein stated that Yan Liu is a specific individual named in the City's Exhibit and Yan Liu was not hired by Mr. Li on May 13<sup>th</sup>? Mr. Li responded, through the interpreter, that correct, he did not hire her. Counsel Klein stated that he had nothing further.

Counsel Jones posed questions to Mr. Li, which were answered through the interpreter as follows: Mr. Li indicated that he did not own any other massage businesses in the state of North Carolina. He did own the business, May-Spa on Battleground Avenue in Greensboro, on January 6, 2015. He also has a business in Burlington, North Carolina. He did not file a background application for privilege license to operate a massage business with the City of Greensboro on January 6, 2015. Counsel Jones provided Exhibit 2 to Mr. Li for clarification. He then stated that he did not understand what the document was for. After viewing the document he remembered that the information on the document was correct and was signed by him. He applied but he does not know English so he had his niece go over the document with him. This May-Spa belongs to him but he did not understand applying for the privilege license, so his niece explained it to him and he signed it. Mr. Li stated that the document was signed in front of a Notary. He employees two (2) licensed massage therapists in North Carolina, Mimi, and Qian Lin. They perform massage therapy at his business. He asked if his niece could come and interpret for him because he thinks she can do a better job?

Chair Huffman asked the interpreter if she was a certified translator and she responded that she is not a certified interpreter but she works for Language Resources and was contracted through the City of Greensboro. She explained that she speaks many dialects of Chinese but she is not a native of this particular language. She can understand Mr. Li but he is having a difficult time understanding her. Chair Huffman stated that she would have a problem with the niece translating because the testimony could be tainted simply on the translation and the inflection of the actual questions. Counsel Jones stated that she would also have a problem with that. There are a number of other witnesses and she assumes they have some direct knowledge and information and she would suspend her questions of Mr. Li as answers may come from the other witnesses. Chair Huffman asked Counsel Klein if he needed an interpreter for his other witnesses. Counsel Klein stated that he does need an interpreter for those witnesses.

Ms. Eckard asked if there was any reason why Ms. Melody could not come up and talk or Ms. Chang or some of the individuals who may have been observed coming out of the massage rooms, who may be here this evening?

Counsel Schnierer stated that they will be called as witnesses and she would like to stay with the interpreter that is present. Chair Huffman stated that at this point it is an automatic appeal and the last 3 hours were wasted. Counsel Jones stated that she is uncomfortable with a family member translating for the witnesses. Chair Huffman stated that the translating needs to be untainted, unrelated and 100% above-board interpretations. Mr. Cummings stated that the problem is that no one can say that it is 100% untainted. Chair Huffman stated that at this point, the Board knows that the translation is not pure so she thinks there is no other choice. Mr. Forde stated that it seems to him, if the Board is going to another interpreter who is interpreting the conversation, they could certainly do the same thing with the other young lady and if that testimony is tainted under another person's deciphering, she would be able to state that for the record. Counsel Schnierer stated that the goal is to have a neutral third party as the interpreter, so she strongly suggested that they do that.

In response to questions from the Chair, Loray Averett stated that the City Contact Center has a list of interpreters for any of the public hearings and that goes through the Language Resource Center. She specifically requested, as she was asked to do for Mr. Li, a Mandarin Chinese interpreter. The interpreter stated that she does speak Mandarin Chinese and Mr. Li speaks Mandarin Chinese, but there could still be an issue with him understanding her because of the different dialects of Mandarin Chinese. People in China speak many dialects and she speaks many different dialects in Chinese. Mr. Forde suggested that both attorneys stipulate to either one of the translators so that this case can move on. Chair Huffman stated that the appellant has an immediate right to an appeal as everything that has already been said and done is null and void and Counsel Klein has a right to appeal, simply because of what was just put on the record. Chair Huffman suggested that the Board not waste any more time and continue this case until an appropriate interpreter can be found. The Board has just wasted 3 hours and 7 minutes of their time and there are other people waiting to have their cases heard, the staff and this is costing the City for the interpreter.

Chair Huffman made a motion to close the public hearing. Ms. Eckard stated she did not want to close the public hearing. Loray Averett stated that on May 7<sup>th</sup> she was present in Mr. Hawk's office when Mr. Li and his niece came to file an appeal letter. His niece spoke for Mr. Li and spoke English very fluently, so most of her communications was with the niece and she asked the niece if he needed an interpreter at today's meeting and Mr. Li said he did. Ms. Averett realized that there were different kinds and dialects of the Chinese language and she asked what specific

language Mr. Li speaks and she was told it was Mandarin Chinese. If a different interpreter is needed, someone needs to tell her what specific language is needed so she can give this information to Language Services Center. Counsel Schneier stated that she feels the Board should go ahead and push through with this case. If it is going to be appealed, then it will be appealed, but a decision needs to be made by the Board tonight on this matter. If she has to go to Superior Court and defend the actions of the Board, she will certainly do so.

Mr. Cummings stated that based on what he has heard, if Mr. Li's niece would like to stand beside the interpreter to clarify any misunderstanding, he feels that would be a good solution at this time.

Counsel Klein made an objection for the record because he has to, but he is here for the benefit of his client as this is one of the most important days of his life. There is a lot at stake here so this is the fact-finder of the case and if there is any concern here, it worries him for his client. He had no knowledge beforehand that there might be a problem with the translator.

Mr. Cummings stated that because of Mr. Klein's objection it may be cause to continue, to protect the integrity of the Board, but also the proceedings going forward it may be necessary to continue. Mr. Nimmer stated that he sees both sides of it and it seems this may be the time to take a vote from the Board members. Ms. Eckard stated that she is not inclined to continue because she does not feel that the testimony that has been heard is direct testimony made from some of the other people that are involved in this, like Ms. Melody or Ms. Mimi or if any of the other people that were present on May 6<sup>th</sup> or May 13<sup>th</sup> that could speak and share more evidence. She is not comfortable with the translation that the Board has heard so far from the interpreter and she feels for everyone that has been sitting here so long this evening. Ms. Hayworth stated she does not feel that the Board can say what has and has not been said or can judge the interpretations already made. None of the Board members speak Mandarin Chinese so what the witness and the translator are saying is what the Board has to rely on. The interpreter is doing the best she can and he has a difficult time understanding what the Board is asking. She suggested that if there is someone else that can give testimony more clearly and in English, without translation, then the Board should hear that testimony from the other witnesses and move forward with the case. She apologized to the people who were there for other cases. Mr. Forde stated that he has a little bit of a problem with the fact that testimony was heard for an hour and 35 minutes before anyone objected to what was being said because of the language barrier. However the other Board members wish to proceed is fine with him. Ms. Wood stated that she would like to hear from some of the other witnesses with the opportunity to call Mr. Li back if necessary.

Counsel Schneier again suggested that the Board go ahead and push through and finish the case this evening.

Mr. Forde suggested that this case be held or paused and the other cases go ahead and be heard. Now that the Police Officers have testified and are no longer needed, he feels that postponing the remainder of the case for a short time would be beneficial to all concerned.

Ms. Eckard moved to pause Case BOA-15-18, 2511-E Battleground Avenue, until after hearing the other cases on the agenda, seconded by Mr. Nimmer. The Board voted unanimously in favor of the motion. (Ayes: Huffman, Hayworth, Cummings, Nimmer, Eckard, Forde and Wood. Nays: None.)

**(Thereupon, there was a short break from this case beginning at approximately 8:15 p.m. to hear other cases on the agenda)**



Testimony in the case concerning BOA-15-18, 2511-E Battleground Avenue, reconvened at 9:20 p.m.

Chair Huffman re-opened the above-mentioned case for testimony or comments by Board members. There had previously been a suggestion that Mr. Li's niece, Melody, be allowed to stand beside the interpreter to determine that Mr. Li's responses were correctly conveyed by the interpreter.

Mr. Cummings stated that he has previously been in situations where translators were used and he feels that it is important that everything Mr. Li says is stated by the interpreter so it is on the record. For the record, he does see that there are serious concerns in this matter. The interpreter has stated that she is not certified to be a translator and also said that they do not speak the same dialect. He thinks that would warrant a continuation of this matter and that is how he would vote. Mr. Nimmer stated that he would agree with what Mr. Cummings said as there would be different translations of different parts of the testimony. There was no issue with the City's side of the testimony but if you want the translation to be accurate, he feels they need to start over and they have to do their entire presentation again with a certified translator. Ms. Eckard stated that she was on the fence because she felt that there are witnesses that could testify and do speak English and she is not asking Ms. Melody to tell what the owner of the shop has said. She just wanted to hear from Ms. Melody and Ms. Mimi and the others to find out from Mr. Hawk, when there are two (2) people coming out of the rooms, are they present at the meeting tonight? There are some simple questions that she thinks could be answered, in English, to give her an opinion of whether or not she feels the Board can go forward or not. Chair Huffman stated that she agrees with Mr. Cummings, but unfortunately, the Board found out too little too late that there are dialect issues. However, she also feels that the applicant was clear when he went through Ms. Melody to request a Mandarin Chinese interpreter. So if that is what he requested, that is what he received. She does believe that even if the Board stops now or goes forward, there is a reason for an appeal and if there is going to be an appeal, she is inclined to move forward. She thinks the language barrier, although there are some differences, overall generally speaking, there is enough of everything understood in order to answer some of the simple and clear questions that have been asked from Mr. Klein as well as Ms. Jones. She is inclined to move forward with the interpreter that was requested, specifically by the applicant.

Ms. Hayworth asked staff if a certified interpreter is requested or are they all assumed to be certified? Loray Averett responded that staff specifically requested certified interpreter. In, this particular case, because she goes through another staff person in the Services Contact Center and then they start the conversation with the Language Resources Company, which is located on Fisher Avenue. Language Resources have provided interpreters for other meeting, within the City as well, when interpreters are needed. They have always supplied certified interpreters as far as she knows. Ms. Hayworth asked if it is the process of the City staff to request, every time, that a certified interpreter be provided? Loray Averett responded that was the process of the City staff. Ms. Hayworth stated that she feels the Board has talked Mr. Klein into an appeal because of the discussion among the Board members. She pointed out that there were a couple of hours of testimony without any objections to what was being said by the interpreter. If the interpreter was not correctly relaying what Mr. Li was saying, she feel certain that some of the ladies at the back of the room would have made themselves known that they did not agree with what was being said. She also feels that if the Board was going to continue the case, that decision should have been made before the other three cases were heard and making the applicant and his witnesses wait through all that time. She feels that the Board needs to appeal to the City Attorney on

whether to move forward or not, because she knows the legal process that this is going to go through.

Counsel Schneier stated that she feels the Board needs to move forward and also be forewarned that this case could be appealed. She does not know how the Board wants to vote, the Board can uphold Mr. Hawk's decision or overturn the decision at this point. However, if the Board moves forward and upholds Mr. Hawk's decision, there could be an appeal which could be remanded and be back here again.

Mr. Cummings pointed out that for the past 5 minutes of conversation, he has not seen the interpreter saying anything to Mr. Li or telling him anything about what was going on with the Board and their Counsel.

Mr. Forde stated that it is his opinion that it is the applicant's determination as to whether they want to proceed or not. This case is not brought by the City, it is brought by the applicant. If the applicant's attorney wants to move forward, then he can move forward or not. He can also ask for a continuance from the Board. The Board can then determine whether they want to grant a continuance based on why he doesn't want to move forward. Ms. Wood stated that she wanted to move forward and listen to some more testimony.

Counsel Klein stated that this mechanism is new to him and he does not want to step on any toes of the fact-finder, but if now is the appropriate time to respond, Mr. Forde is correct, in his opinion, his client intends to move forward and does not want a continuance at this time. He would like to continue with the existing interpreter and his client's niece, Melody.

Counsel Jones stated that she feels that she is in a difficult position as she has concerns about whether the interpretation is adequate and complete and she is concerned about how it will reflect on the City because the City is the one that provided her. She is willing to go forward with the dual translators although that is not the best thing to have other witnesses provide the translation. She is also prepared to not ask Mr. Li any further questions. The City is willing to go with the wishes of the Board, whether to go forward or go with a continuance. Chair Huffman asked if Ms. Melody would be willing to serve as a pseudo-interpreter if a big difference should come about and Counsel Klein stated that she would.

Counsel Jones stated that she has concluded her cross-examination of Mr. Li. Ms. Melody went to the podium to be on hand to help as an interpreter.

Chair Huffman swore in the witness, Yan Liu, as translated into Chinese, as well as English.

In response to questions posed by Counsel Klein, the witness Yan Liu responded as follows: Her name is Yan Liu and she works at Hanes Mall at Spring Taylor. She has never worked at May-Spa and Mr. Li has never hired her to work there. Mimi has never hired her to work there and she is only a friend of Mimi. She was at May-Spa on May 13<sup>th</sup> to receive a treatment on her back and shoulder, called Fire Cup. She has a previous back injury and needs treatments to relieve her pain. She stated that she was just sitting inside the room for her treatment. A customer came in and Mimi did not want to lose this customer and asked Yan Liu if she would escort the customer to the massage room until she could be there in 10 minutes to start that customer's massage. She did not give the customer a massage, she only took a towel to the customer.

In response to questions posed by Counsel Jones, the witness Yan Liu responded as follows: She did hear the testimony of Mr. Hawk earlier today. The boss's wife also asked her to escort the customer to the massage room, but she did not touch that customer in any way. She denied that she touched or massaged the customer on that day as Mr. Hawk had stated she did. She does not go to May-Spa to receive massages, she goes to receive Fire Cup treatments which help with her back and shoulder pain. She does not pay for this service, Mimi does it for her because she is her friend. She has never seen customers when they pay money for their services. The boss's wife was there that day.

Counsel Klein asked the witness how many times she has been to May-Spa to receive Fire Cup treatments in the past. Yan Liu stated many times, maybe 10 or 15 times and she never paid for it because she and Mimi are good friends.

Ms. Wood asked if the witness was asked to show her driver's license and she showed her license to Mr. Hawk. She does eyebrows, facials and manicures and she does not have a license to do that. She does not do that at May-Spa. Ms. Hayworth stated that it is her understanding that if a person touches another person in any manner, they have to have a license to do so. She does eyebrow threading.

Counsel Klein made an objection because the witness stated she only went to May-Spa for Fire Cup therapy and not that she was there on the 13<sup>th</sup> to provide massage therapy, eyebrow waxing, tailor work or anything of that nature, she was there to receive a service.

Counsel Klein asked Mr. Ricky Pearce to come to the podium to testify. In response to questions posed by Counsel Klein, the witness responded as follows: His name is Ricky Pearce and he is employed as Assistant Chief Engineer for TV station WXLV, ABC 45 and WMYB My 48. He is married to Ms. Liu. He explained that when Ms. Liu first immigrated to the United States her first green card said Liu as the surname, on the second green card is said Pearce. A lot of her documents still say Liu, such as her driver's license, which was obtained under that first green card. They have been married since June 1, 2010. He met her while he was in China visiting. She works at Spring Tailor as a seamstress and she also assists customers and takes in tailor work.

Counsel Jones objected as to whether this testimony is relevant to this case.

Counsel Klein provided a document for review of the witness and the Board members. He asked Mr. Pearce to explain what the document was. Mr. Pearce stated that this was a check stub from Spring Tailor and it shows that his wife was paid by Spring Tailor for 5/1/2015 through 5/15/2015. Mr. Pearce verified that he heard his wife testify to her back injury.

Counsel Jones objected because Mr. Pearce has not stated that he was present on May 13<sup>th</sup> at May-Spa and observed what his wife was or was not doing there.

Mr. Cummings stated that he felt that this was corroborating the testimony of his wife that she is not an employee of May-Spa, that she is really an employee of Spring Tailor.

Counsel Jones stated that Ms. Pearce admitted to being present on May 13<sup>th</sup>, so she was not at her regular job at Spring Tailor. Mr. Cummings stated that what they are here to determine is was this unlicensed lady providing massage services. Counsel Klein is presenting testimony that she was not and she has testified that she went there to receive a service done. Her husband is corroborating that she was, in fact, not working at May-Spa, by showing that she works at this

other place. Counsel Jones renewed her objection because her husband is, at best, giving hearsay testimony and why weren't these questions asked of Ms. Liu? Counsel Klein stated that Ms. Liu has testified that she does work at Spring Tailor.

In response to further questions posed by Counsel Klein, Ms. Liu stated that this was a copy of her pay stub where she worked at Spring Tailor and she worked there on the time period stated. Counsel Klein then presented copies of Ms. Liu's x-rays of her back showing the hardware that has been placed in her back as a result of her injury. It also shows a break in the hardware.

Counsel Jones stated that she had no questions for this witness at this time.

Counsel Klein re-called Mr. Pearce to the podium and Mr. Pearce responded to questions. Mr. Pearce stated that his wife lives with him and he knows all about her. She works for Spring Tailor and does not work for May-Spa. His wife has had a back injury and has been to May-Spa for treatment of her back pain.

Counsel Jones objected as Mr. Pearce cannot be aware of where his wife was the day in question and is relying on hearsay, unless there is another foundation. Counsel Klein stated that Ms. Liu just testified to that and how was that hearsay? Counsel Jones asked why does this witness, Mr. Pearce, need to testify to that. Counsel Klein stated that it is in corroboration of Ms. Liu's testimony. The City is relying on one (1) person being in violation and that is Ms. Yan Liu and he called her to testify in a specific way and he has now called her husband, the person who is closest to her, to verify that exact testimony.

Counsel Jones stated that there are witnesses that were there on that day who, potentially, could provide the same kind of information and she did not know why he needed a witness that was not present that day.

Mr. Forde asked Mr. Pearce if his wife, prior to being his wife, when she lived in China, did she ever work as a massage therapist. Mr. Pearce stated she did not, to his knowledge, and she has never worked in this county as a massage therapist.

Counsel Klein called Ms. Mimi to the stand and she was also sworn in as the Chinese language. Ms. Melody was also asked to also stand in as interpreter, if necessary. In response to questions posed by Counsel Klein, Ms. Mimi, Jiron Chang, through the interpreter, stated that she was employed as a licensed massage therapist at May-Spa on May 6<sup>th</sup> and on May 13<sup>th</sup>, 2015. She has never hired Yan Liu to perform massage therapy at May-Spa and Yan Liu did not perform massage therapy at May-Spa on May 13<sup>th</sup>. She did not see anybody pay Yan Liu at May-Spa on May 13<sup>th</sup>. Counsel Klein stated he had no further questions.

Ms. Melody asked Yan Liu if she understood what the lawyer was asking and she stated that she understands some of it, but not all. Ms. Mimi stated that this was the 2<sup>nd</sup> time she has met Mr. Klein. Counsel Klein stated that he had no further questions.

Counsel Jones asked Ms. Mimi what name she received her massage therapy license under. Ms. Mimi stated it was Qian Lin, which is the same name that is on her North Carolina driver's license and she got those license in 2010. She testified that she performs Fire Cup on Yan Liu at no charge because they are friends. Her job duties at May-Spa are massage therapy and she takes appointments for the business and the payments from customers. On May 13<sup>th</sup> she had Yan Lin in a massage room because she was holding the client there because she was busy. Yan Lin did not

perform a massage on anyone that day and she was not asked to do a massage. She was not in charge or running the business. There were two customers that day and then another one came later. The other licensed massage therapist was present that day also. She was not present at May-Spa on May 6<sup>th</sup>. Counsel Jones stated that she had no further questions. Counsel Klein stated that he had no Re-Direct questions.

Chair Huffman asked how long it takes to get a massage and Mimi answered through the interpreter that it depends on whether the customer wants a ½ hour or 1 hour massage.

Counsel Klein called Ms. Li, the appellant's wife, to the stand. Ms. Li was sworn in again in Chinese through the interpreter. She responded to questions posed by Counsel Klein through the interpreter. She stated her name is Chen Lin and she is married to Mr. Li. She works at May-Spa as a licensed massage therapist and was present and working on May 6<sup>th</sup>. She was also working on May 13<sup>th</sup>. He did not hire Ms. Yan Liu on May 13<sup>th</sup> and has never seen her give a massage when she was there. Counsel Klein stated he had no further questions of the witness.

Counsel Jones posed questions to the witness, Ms. Chen Lin, which were answered through the interpreter. Ms. Yan Liu took a customer in the massage room on May 13<sup>th</sup>, but she did not give anyone a massage. She said that she was busy at the time when the customer came in and she heard someone talk to them and Mimi was also busy so they asked Qian Lin to take the customer into the room. Ms. Chen Lin stated that is not the manager of the business. She said that there were many customers and she understood that she cannot hire anybody without the proper license. She or Mimi takes the money when a customer pays for the service. They do not provide free services. On May 6<sup>th</sup> she and Mimi were working that day and Lisa was working. Lisa was not giving massage, she was giving exfoliating. Ms. Chen Lin is not licensed by the state of North Carolina to teach massage therapy. She was teaching Lisa how to relax the body on that day. They touched the skin on that day to give the skin exfoliate on the back, the whole back. Mr. Hawk testified that she was in the room with a customer while he was on his visit to the establishment. She said that sometimes when they are busy and another customer comes in, that is the way to sort of soothe the customer to keep them there. She explained that Lisa does not work there to give massages, but to apply creams or salts to soothe the customer. She was present when Yan Liu was there but did not hear the customer identify her as the person that gave the massage. She was at the store or the spa that day but she did not see Ms. Liu perform any massage. She did not hear the customer say that Ms. Liu had given the massage. She was there but she does not believe that Ms. Liu performed the massage for the customer. She does not know if the customer was exfoliated by Ms. Liu. People who are not employees are not allowed to perform services at May-Spa. Employees that are not licensed are allowed to perform services such as touching and rubbing on clients. This is not a massage because it is her understanding that a person has to have a license to do a massage. Exfoliating is not a massage. She did supervise the employees on May 6<sup>th</sup>. Counsel Jones stated that she had no further questions.

Counsel Klein asked about this Lisa, that has now been mentioned and asked if she was working on May 13<sup>th</sup>, as well? Ms. Lin stated that she was not working on May 13<sup>th</sup>. The only employees working on May 13<sup>th</sup> were Mimi and herself. She does not ask non-employees to provide services at May-Spa. Counsel Klein stated that he had nothing further.

Counsel Jones asked if Ms. Lin heard the testimony that Mimi asked her friend, Yan Liu to escort a customer to a massage room? Ms. Lin stated that she heard that and she just looked up and Yan Liu took the customer into the room. She did not see what Mr. Hawk saw in the room because she was in the room with another customer. She did not see Ms. Liu in the room with a

customer. Counsel Jones stated that Mr. Hawk testified that he looked into the room and saw Yan Liu performing massage and asked if Ms. Lin saw in the room at the time that he entered? Ms. Lin stated that when Mr. Hawk came in she came out of another room, so she did not see. Ms. Melody stated that Ms. Lin was trying to say that she was there when Mr. Hawk saw the young lady in the room and they are all in different rooms. Counsel Jones stated that she had nothing further.

Counsel Klein asked if escorting someone back to a massage room is not massage therapy. Ms. Lin stated that it was not. Counsel Klein stated that he had nothing further.

Chair Huffman asked how difficult it is for a customer to come into the business and let the employees know what kind of service they want and for how long. How do they know if that customer wants a 30 minutes massage or an hour massage? The interpreter stated that Ms. Lin would ask the customer first how long the customer would like to be massaged. She can say that in English.

Ms. Wood asked when a customer goes into the door, if there is a sheet that they sign telling what service they want? And is there a record that they keep to tell them how many customers they have each day? Ms. Lin stated, through the interpreter, that they do not keep a record like that. Ms. Wood asked when they are paid for the massage does the massage therapist give all the money to the owner or do they only give part of the money and keep their part? Ms. Lin responded that it all goes to the business. The employees are paid by the month and get a fixed amount each month no matter how many customers they have.

Counsel Klein stated that he had no additional witnesses.

Ms. Eckard asked Mr. Hawk if the two (2) individuals that he feel were unlicensed massage therapists were here tonight? And could he identify them and give their names? Mr. Hawk stated that on May 6<sup>th</sup>, there were two (2) unlicensed employees and they are not here tonight and he does not know their names. On the 13<sup>th</sup>, Ms. Yan Liu (Pearce) is here and he identified her as being there that day.

Mr. Forde stated that Mr. Hawk had mentioned earlier that there are about 38 places in Greensboro that are listed as massage therapist and he issued the Notice of Violation on the 6<sup>th</sup>, apparently the next day or so, Mr. Li and Ms. Melody came to his office and had a discussion. At that time, Mr. Hawk provided a piece of City of Greensboro letterhead and asked if it was Mr. Hawk's handwriting or Ms. Melody's handwriting? Mr. Hawk stated that it was not his handwriting, it was Ms. Melody Wang's handwriting. Would it be Mr. Hawk's understanding that the Notice of Violation was taken care of at that time? Mr. Hawk stated not that it was waived or thrown out. He would contend that they came in and made a statement that they would begin following the guidelines. Mr. Forde asked how many Notices of Violation have been issued over the past couple of years for massage establishments? Mr. Hawk stated there have probably been 6 or 7. He usually revisits the establishments a week or so later. He has revoked two (2) licenses of massage establishments, that he recalls.

Mr. Cummings stated that both of the officers testified that they have the capability of running names through the system to determine where a person is from or if they are giving valid information. So presumably, the two (2) individuals that Mr. Hawk was checking on, they did get their names. Mr. Hawk stated they were identified as Jinron Chang and Qian Lu. Mr. Hawk stated that he did not see anyone, physically, giving a massage. Mr. Cummings asked Mr. Hawk why he

didn't ask the customers on the 6<sup>th</sup> who they received a massage from like he did on the 13<sup>th</sup>. Mr. Hawk stated that he did not ask the customers on the 6<sup>th</sup>. He spoke to the unlicensed employees that day.

Mr. Forde moved that the public hearing be closed, seconded by Ms. Hayworth. The public hearing was closed by unanimous vote.

### **Board Discussion:**

Ms. Wood stated that she does feel like there is enough hard and fast evidence to revoke the license.

Mr. Forde stated that he agrees with Ms. Wood and he does not feel that there is any evidence that was presented. He has a problem with how this whole thing transpires. There are people who have no allegation anywhere that they were doing anything illegal, other than the fact that they seem to have some people there giving massages without a license, but by Mr. Hawk's own testimony, there are way too many people and they are way too understaffed to do the necessary investigations that would entail, yet it seems that within a year they have been to this place five (5) times. He just does not understand why. And then he just has a problem with the fact that there are people running a business in a regular shopping center on Battleground Avenue and five (5) times within a year a member of the Revenue Department of the City of Greensboro, along with Detectives enter their business and then one standing behind the business and they go through and ask a bunch of questions, and apparently, there is a language barrier. It is his experience that he is able to go to restaurants in Greensboro and even though there may be a language barrier he is able to get the food he wants. He also has a problem that Attorney Jones made reference to the fact that these people gave away free services. He thinks it was very clear on the record that the one lady is the other lady's friend and it is common to give free things all the time. He does not think that there is any concrete evidence that a massage occurred to a paying patron and that service was given by an unlicensed person. He also thinks that when they came in to see Mr. Hawk they thought they were taking care of the matter. It seems like the Ordinance in this instance does not allow a person to appeal the 1<sup>st</sup> Notice of Violation.

Ms. Hayworth stated that she has a problem with what Mr. Forde said because she feels it was proven that what they are doing is not licensed. Whether someone likes the Ordinance or not, or like the rules or not, a business of this type has to be licensed to touch people. There is an owner that says he is not there, he doesn't go there, and the two (2) people that are licensed say that they are not in control, they're not managers and they're not supervisors and they're not teachers. This is why the Ordinances and rules are in place, to protect the customer. It was not mentioned here about the customer. They admitted that they took the person back and they were exfoliating them, and how can that not be a massage. You cannot touch people without a license. Rubbing cream on them to soothe them until the masseuse gets there and that is also illegal, because it is touching them. She would like to know who is responsible; is it the owner, to make sure that all of the employees are licensed and follow the rules? If he's not there, he doesn't know what is going on and his wife is there, but she isn't in charge, and then the other masseuse that has a license says she is not in charge but then there's a friend there taking people back to a room. There are red flags all over the place in this matter. When a bar or somewhere that serves people has an infraction, they are visited until their infractions are cured. She will not be voting to let them keep their privilege license.

Ms. Huffman stated that her two (2) focuses are licensing and violation and she likes things clean and plain. It is clear to her that there is a reason for licensing and feels that they have licensing issues. She also has a problem with the owner's wife's testimony that another employee, Lisa, is shown how to get customers to relax without a license. She also has a problem with the testimony about the exfoliating someone whole back to help and relax them. She does not see any difference between exfoliating and massage, other than the type of grit that is used on the lotion or oils that are used. She will uphold the revocation of the license.

Ms. Eckard stated that she was undecided considering the revocation of the license. She thinks there may be a problem with them understanding the interpretation of the rules and Codes and what violations they have.

Mr. Nimmer stated that for him it is important to remember that for a revocation of a license you need to meet the criteria. He does not feel that Ms. Liu is an employee of the spa or that she gave anyone a massage. He feels that she was there to get treatment for her back. With no second violation, he does not think there is a reason to revoke the license and he will vote to overturn the revocation. Mr. Cummings stated that the three (3) Officers that were at the meeting were Vice Narcotics officers who said their purpose in going with Mr. Hawk was for security. He suggested that it might be better to use other Officers from other Divisions. The testimony showed that if the license is revoked, this family can no longer make a living. He feels that some of the exemptions should apply to the appellant's employees, such as, a person in training has to be in school and there was no testimony that the individual ladies at the establishment were not in school or was not getting the training. Even if it is assumed that there was a violation, there was no evidence that on the 13<sup>th</sup> there was a violation. Therefore, there would not be two (2) violations and he, like Mr. Nimmer, would be voting to overturn the revocation of the privilege license.

Mr. Forde moved that in regard to BOA-15-18, 2511-E Battleground Avenue, that the findings of fact be incorporated into the record and the revocation of the privilege license be overturned and in support of this motion to overturn, the Board finds the following: The Board accepts the following testimony and evidence as true. No testimony was provided that unequivocally stated that the following occurred; a massage occurred for which a patron paid; payment was made for the alleged massage services which said massage services were performed by an unlicensed person; that those providing the relevant services were in fact unlicensed and therefore non-exempt providers of the alleged services; the applicant was not aware that his appearance and signature on the May 7<sup>th</sup>, 2015, did not address the 1<sup>st</sup> Notice of Violation, and therefore, the 2<sup>nd</sup> Notice of Violation would actually constitute a 1<sup>st</sup> Notice of Violation, and therefore, the revocation of the privilege license would be unwarranted; and, that the two (2) violations on May 13<sup>th</sup> does not constitute a 2<sup>nd</sup> Notice of Violation and only one (1) Notice of Violation has been issued. The property located at 2511-E Battleground Avenue, is within the Corporate Limits of the City of Greensboro and is subject to the jurisdiction and application of its Ordinances. At the time the revocation was issued a license requirement concerning the business did meet the requirements of maintaining the specific license for the specified address as defined in the Code of Ordinances. The City Tax Collector Official did not correctly interpret and apply the terms of the Ordinance in determining that the business was in violation of the Code and the approved business license as filed by the appellant. The greater weight of the evidence presented shows that the appellant's business complies with the Ordinance standards as not supported by staff's Exhibits, seconded by Mr. Nimmer. The Board voted 5-2 in favor of the motion to overturn the business license revocation. (Ayes: Forde, Nimmer, Eckard, Cummings, and Wood. Nays: Huffman and Hayworth.)



Counsel Schneirer stated that the majority carries and the decision of the inspector is overturned.

**(Thereupon, this case ended at 11:18 o'clock p.m. and the Board turned to final matters on the agenda)**

## **OLD BUSINESS**

## **VARIANCE**

- (a) **BOA-15-13: 1710 THREE MEADOWS ROAD** Pamela Bennett requests a variance from a minimum side setback requirement. Variance: An existing attached garage encroaches 8.8 feet into a 10-foot side setback. This request was continued from the May 26, 2015 meeting. Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Pheasant Run Drive.  
**(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for an existing attached garage which encroaches 8.8 feet into a 10-foot side setback. This request was continued from the May 26, 2015 meeting. The property is located on the north side of Three Meadows Road east of Pheasant Ridge Road and is zoned R-3. The property contains a single family dwelling with an existing attached garage. Property records reflect the house was originally built in 1977. The lot contains approximately 26,136 square feet or equivalent to 0.6 acres. Exhibits 3 are copies of records containing a variance request with short minutes that was heard on September 25, 1978. The request was for a carport/garage to encroach into a side setback about 3 feet. Based on the required setback in 1978, current staff determined the required side setback was approximately 8 feet. This would have put the carport/garage 5 feet from the side lot line. The language from the short minutes Labeled as Exhibit 3 contains statements that gave some clarity to the request. Former City Staff, Mr. Andrews stated if the Board approved this, Mrs. Nelson will then have to go before the Planning Dept. for a release of the easement, as the carport will encroach into the easement 4 to 5 feet. The easement was established as a 10-foot easement. There are no records to reflect that at the time of writing this report this property was ever granted any easement releases. Guilford County tax records reflect the current owner, Pamela Bennett purchased the property in 2006. At the time of her purchase, the garage was in place located 1.2 feet from the side lot line. The current owner and applicant had the property surveyed on April 10, 2015. That exhibit is identified as Exhibit B. The existing garage is shown 1.2 feet from the side line, instead of the 5 feet that was approved by the former request in 1978. The applicant immediately filed for an easement release for this area of the lot and for a new variance to correct the encroachment that went beyond what was approved in 1978. (The easement release request is currently being evaluated and an updated report on that request will be disclosed prior to the hearing of this request). Staff advertised the current encroachment as 8.8 feet into a 10-foot side setback requirement. The consideration that a variance was previously granted for 3 feet into a then 8-foot setback could reduce this encroachment request. If consideration can be given to the previous variance of 3 feet into an 8-foot setback reducing the setback to 5 feet, then the current 1.2 setback will regenerate a request for a 3.8 foot encroachment, which is less than the advertised request of 8.8 feet into a side setback. After a recent field visit, staff noted the applicant has installed a fence that is approximately 8 plus feet beyond her side lot line. The fence location will be a private civil matter between the applicant and the owner of the lot which has the fence placed on it. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Huffman asked if there was anyone wishing to speak on this request.

Amanda Hodierna, attorney representing the applicant, 804 Green Valley Road, was sworn in and presented materials for the Board members' review. She stated that that staff has already explained this case in detail. The case is rather complex due to the prior history of the previous variance on the property. The nature of the variance is to allow an encroachment into a side setback for an existing attached garage that was constructed in 1978. The previous variance approval was conditioned on the property owner obtaining an easement release for the utility easement as shown on the survey. For an unknown reason the structure was built 1.2 feet from the property line instead of the approved 5 feet and the easement release was never obtained by the original property owner. The current property owners were unaware of this issue until a few months ago when a prospective buyer ordered a survey to complete their purchase of the property. They immediately file for the variance and are trying to remedy the situation. The easement release was obtained and signed off on by the Greensboro Planning Board last week. In addition, the current owners have removed the fence on the property to clear up any other outstanding issues to try and make this issue as simple as possible. The LDO requires a 10 foot side setback in the R-3 zoning district, which applies to this property. Their request is to allow the existing garage to encroach 8.8 feet into that setback. They believe that this variance application meets the purpose and intent of the City Ordinance and also meets the test under the Ordinance for the granting of the variance. The attached garage has existed in place for more than 36 years and would have to be removed if the variance is not granted. The garage was built in 1978 and has stood in place since that time. This encroachment matter is rendering this property unmarketable and one prospective buyer has already walked away over this issue. Currently, there is a second buyer waiting to close if these matters are cleared up and the variance is approved. The western side of the house, where the encroachment is, was the only option for siting a garage structure. There are two large easements traversing the rear yard of the property; a 20' drainage easement, and a 10' of a 20 foot wide utility easement also touches this property and these easements preclude any possibility of a detached garage structure in the rear yard. The eastern side of the property is also not quite wide enough for a garage structure without a variance. Additionally, the layout of the house would not support anything on that side of the house because the bedrooms are on that end of the house. Given these restraints, the only place the garage could reasonably have been added was on the western side of the house over the existing driveway. The property owners did not build the garage and they purchased the property in 2006 with the garage in the location as it had been for almost 30 years. A Notice of Violation has never been issued for this property and there have been no complaints. Granting of the variance would be in keeping with the characteristics of the neighborhood. The next door neighbor has sent a letter showing their support of the request.

There being no other speakers on this matter, the public hearing was closed by unanimous vote.

#### **Board Comments:**

All the Board members indicated their support of this request as it appears to be a very reasonable request.

Mr. Nimmer moved that in regard to BOA-15-13, 1710 Three Meadows Road, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the

provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because they will not be able to keep an existing garage that has been on the property since 1978. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the previous utility easement went across the property makes the lot unusually narrow. The hardship results from the application of this Ordinance to the property because the garage is in a side setback and therefore should not be allowed. Also there is no other appropriate place for the garage to be located on the property. The hardship is not the result of the applicant's own actions because the encroachment was in place before the applicant purchased the property and the previous owner did not obtain the easement release. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it simply allows the existing garage to remain in place. The granting of the variance assures the public safety and welfare and does substantial justice because the current conditions have been in place since 1978, seconded by Mr. Forde. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Forde, Nimmer, Eckard, Cummings and Wood. Nays: None.)

## NEW BUSINESS

### VARIANCE

- (a) **BOA-15-16: 5816 KACEY MEADOWS DRIVE** John and Leslie Turner request a variance from a minimum rear setback requirement. Variance: A proposed screened porch addition and a covered deck will encroach 10 feet into a 20-foot rear setback. Section 30-7-3.2, Table 7-1 and Table 7-2, Present Zoning-R-3 (Residential Single-family), Cluster Development, Cross Street – Fleming Road. **(GRANTED)**

Loray Averett stated that the applicant is proposing to construct a screened porch over an existing patio area attached to a single family dwelling. A portion of the screened porch, along with a covered deck will encroach 10 feet into a 20-foot rear setback. The property is located on the north side of Kasey Meadows Road, west of Fleming Road. The lot is zoned R-3 (Cluster), which means the lot may use the R-5 zoning setbacks. The applicant is proposing to construct a screened porch and a covered deck over an existing rear patio. Records reflect the lot is recorded as Fleming Meadows Section 1, Lot # 17. The lot is odd shaped due to its location to the bulb frontage along Kacey Meadows Drive. The western lot line and the rear lot lines are slightly angled. Property records reflect the house was constructed in 2005. The Unified Development Ordinance was enforced during that time frame. Under the UDO (Unified Development Ordinance) the zoning was RS-12 and would have used RS-7 setbacks. That setback requirement was also 20 feet minimum from the rear; thus the rear setback requirements between the UDO and the current LDO remained the same. The properties located adjacent to and north of the applicant's rear and side lot lines are developed with similar single-family homes. The rear lot line of this property is heavily landscaped as a privacy buffer. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less. The CL (Cluster development standards) allows more lot coverage with the structures and smaller lots with the same density, however the rear setback remains at a 20-foot minimum.

Chair Huffman asked if there was anyone wishing to speak on this request.

Leslie Turner and her husband, John, were previously sworn in and she stated that in the package the BOA members are shown a plat map which indicates that the proposed structure is the new, small screened porch for protection from the sun and mosquitos. The lot is curved and an odd shape with severe angles. With the setbacks that are in place, they are limited to use on the property and 32% of the back yard will not be used unless they are able to obtain the variance. They have landscaped heavily to provide privacy from both neighbors to the rear. Photographs were presented as illustrations of the property and the proposed screened porch. None of the existing trees will be removed as they wish to preserve these trees. The rear neighbors will be unable to see the proposed new structure as they cannot see the existing patio now because of the landscaping and existing trees to the rear. They are limited to the space they can use on this lot and they would like to install the proposed screened porch. They would have to obtain the variance before they can go to the Homeowners Association for approval.

There being no other speakers on this matter, the public hearing was closed by unanimous vote.

### **Board Comments:**

All the Board members indicated their support of this request as it appears to be a very reasonable request and will not be detrimental to the neighborhood.

Ms. Hayworth moved that in regard to BOA-15-16, 5817 Kacey Meadows Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because present and future owners of the property will be able to extend the outdoor living space and use the space free from bugs and mosquitos. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the lot is located in a curved cul-de-sac with space on both sides and the lot also has severe angles. The hardship results from the application of this Ordinance to the property because the size of the original footprint of the house absorbs a large portion of the building space and does not allow for a protected outside covered area. The hardship is not the result of the applicant's own actions because of the odd shape of the lot. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the proposed screened porch will be less in-depth than the existing patio and adds to the value of the property. The granting of the variance assures the public safety and welfare and does substantial justice because of the heavy landscaping, neighbors will be unaware of any activity and it does not affect the neighbors or neighborhood, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Forde, Nimmer, Eckard, Cummings and Wood. Nays: None.)

- (b) **BOA-15-17: 202 ELMWOOD DRIVE** Richard Vanore requests a variance from a minimum rear setback requirement. Variance: The applicant is requesting to attach an existing residential dwelling and a detached accessory building by means of a covered structure (including a proposed carport) which will create one principal structure. The structure will encroach 16.5 feet into a 20-foot rear setback. Table 7-2, Present Zoning-R-5 (Residential Single-family), Cross Street-North Elm Street. **(GRANTED)**

Nicole Smith stated that the applicant is requesting to attach an existing residential dwelling and a detached accessory building by means of a covered addition (including a proposed carport) which will create one principal structure. The structure will encroach 16.5 feet into a 20-foot rear setback. The property is located on the north side of Elmwood Drive west of North Elm Street and is zoned R-5. The property contains a single family dwelling and a detached accessory building. Property records reflect the house was originally built in 1922. The Guilford County tax report has the properties listed as two separate parcels. They are under the same ownership. Both parcels reflect the total lot size is approximately 16,988 square feet. On May 27, 2015 the applicant applied for and received approval for a proposed addition consisting of a sunroom, bedroom and bathroom. Since that approval, the applicant has now requested to add a carport along with extending the recently approved addition with a covered structure to be attached to the detached storage building, which is located in close proximity to the rear lot line. By attaching the structures together, they will become a principal structure and required to meet the principal structure setback requirements. Detached accessory buildings, based on the height of the building are required to meet lesser setback standards. The existing detached building currently meets the required rear setback. It is required to be 3 feet from the rear lot line. The site plan shows the building to be 3.5 feet from the rear lot line which is currently in compliance. A proposed carport which is also proposed to be attached to the addition and the detached storage building will extend into the rear setback. This structure is proposed to be 12.3 feet from the rear lot line. The R-5, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Chair Huffman asked if there was anyone wishing to speak on this request.

Richard Vanore, the property owner, was previously sworn in and stated that he is planning a pretty major renovation to this house to include a downstairs bedroom and a den to the side of the house, and also they would like some cover for their vehicles. The house was built around 1922 and it is a charming house with great street appeal. There is a very small garage at the back that no one wishes to destroy. Unfortunately, today's vehicles will not fit into the existing garage. He feels that they meet the required criteria to be able to obtain the variance. If they are unable to obtain the variance he would have to tear down the existing garage and they really do not want to do that as he feels it is part of the neighborhood and part of the characteristic and charm of the house. There will be minimal change to the distance from the structure to the property line. The carport and breezeway will be between the garage and the house and within the margins of the house and will not be visible from the street not to the neighbors to the rear of the property. Only the neighbors to the side would be able to see it. He has sent letters to all the neighbors and has not received any negative responses. Enlarged plans and elevations were presented for the Board members' review. Mr. Vanore stated that he commended the Board members for their public service and he can tell it is not an easy job.

There being no other speakers on this matter, the public hearing was closed by unanimous vote.

#### **Board Comments:**

All the Board members indicated their support of this request as it appears to be a very reasonable request.

Ms. Eckard moved that in regard to BOA-15-17, 202 Elmwood Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted

based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because if they have to follow the strict application of the Ordinance, they would not be able to protect the integrity of the property which does include a detached garage which does have value on the property and they would not be able to keep the aesthetics in connection with the age of the house. They would also have difficulty with parking requirements in the setback. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the garage built in 1922, would have to be removed in order to comply with the City Ordinances. The unique circumstances with the lot and the placement of the house on it would be in jeopardy because of the strict application of the Ordinance. The hardship results from the application of this Ordinance to the property because of the Ordinances that are in place regarding location of the detached garage and then attached to the house which changes the setback requirements. The hardship is not the result of the applicant's own actions because the house and garage were built in 1922 in compliance with any Ordinances at that time. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it does protect the house near to the street and keeps everything in place while adding some modern amenities to the structure, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Forde, Nimmer, Eckard, Cummings and Wood. Nays: None.)

At this time there was a short break from 9:09 until 9:20 o'clock p.m.

## **OTHER BUSINESS:**

### **(a) Board Members Terms and Elections**

Chair: Annually, at the regular meeting of the Board held in the month of June, a Chair shall be elected by the full membership of the Board of Adjustment from among its regular members. The Chair's term shall be one year (unless earlier terminated as a result of death, resignation or removal) and until a successor is elected, beginning on July 1, and the Chair shall be eligible for re-election. The Chair shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matters before the Board.

Vice-Chair: A Vice-Chair shall be elected by the Board from among its regular members in the same manner and for the same term as the Chair (unless earlier terminated as a result of death, resignation or removal). The Vice-Chair shall serve as acting Chair in the Chair's absence, and at such times shall have the same powers and duties as the Chair.

Ms. Eckard nominated Ms. Hayworth to serve as Chair. Mr. Cummings nominated Mr. Forde to serve as Chair. The Board voted 5 in favor of Ms. Hayworth and 2 in favor of Mr. Forde. Ms. Hayworth will be the new Chair of the Board of Adjustment.

Mr. Cummings nominated Mr. Forde to serve as Vice Chair. The Board voted unanimously in favor of the nomination. Mr. Forde will serve as Vice Chair of the Board of Adjustment.

**ACKNOWLEDGEMENT OF ABSENCES**

There were no absences to report.

\* \* \* \* \*

There being no further business before the Board, the meeting adjourned at 11:27 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair  
Greensboro Board of Adjustment

CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT**

**JULY 27, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Tuesday, July 27, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Patti Eckard, Mark Cummings, Adam Marshall, Enyonam Williams and Laura Blackstock. Planning Department staff were: Loray Averett and Jennifer Schneier, City Attorney's Office.

Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Ms. Eckard moved to approve the minutes of the June 22, 2015 minutes, seconded by Mr. Cummings. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett was sworn in for testimony related to the cases heard at this meeting.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that BOA CASE -15-22, 1502 Quail Drive has been withdrawn from the agenda and no action is required by the Board.

**NEW BUSINESS**

**VARIANCE**

- (a) BOA-15-19: **2427 NORTH BEECH LANE** Pat and Dana Hester requests a variance from the minimum rear setback requirement. **Variance:** A proposed screened porch will encroach 18 feet into a 25-foot rear setback. Sections 30-7-7.2 and 30-4-6.6, Present Zoning-PUD, (Planned Unit Development), Cross Street-Beechcliff Lane. **(VARIANCE GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed screened porch which will encroach 18 feet into a 25-foot rear setback. The property is located at the southeastern intersection of North Beech Lane and Beechcliff Lane west of Lake Brandt Road and is zoned PUD (Planned Unit Development). The property is described as North Beech Subdivision, Lot 13, Plat Book 136, Page 69. The applicant is proposing to add a rear screened porch to their existing house. It will encroach 18 feet into a 25 foot rear setback as regulated by the recorded PUD Plat. The porch is proposed to be 18 feet by 16 feet and will contain approximately 288 square feet. The applicant has submitted a copy of his architectural committee approval pending the variance approval. The property located directly behind the



applicant's rear lot line is zoned R-3 (Residential-Single-family). It is a large acreage tract with frontage on Lake Brandt Road. The area behind the applicant's rear lot line is heavily wooded. PUD-Planned Unit Development, is primarily intended to allow a diverse mixture of residential and/or nonresidential uses and structures that function as cohesive and unified projects.

In response to a question posed by Mr. Cummings and Ms. Eckard, Ms. Averett stated that properties that are zoned PUD do not have any specific setbacks, as they set their own placement of the structures and buildings when the plat is recorded. They do not follow the typical setbacks in the ordinance. The HOA controls the architectural requirements and/or deed restrictions. The Land Development Ordinance does not govern deed restrictions.

Chair Hayworth asked if there was anyone present wishing to speak on this matter.

Pat and Dana Hester, the applicants, were sworn in and Ms. Hester stated that they have a problem with an abundance of mosquitos and they cannot enjoy using their rear property. It is also very hot because it is in direct sunlight and they feel that if they have a covered and screened structure on the property they would be able to enjoy this area of their home. None of the neighbors can see this area of the land and there is a running path at the rear of the property. A number of their neighbors have already constructed similar screened porches on their property and no one has any objection to their plans to improve their property. This is the only location on their property that they could construct this proposed screened porch area and would cover what is currently a patio area.

There being no one to speak in opposition, the public hearing was closed by unanimous vote.

**Board Comments:**

All the Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property.

Ms. Eckard moved that in regard to BOA-15-19 2427 N. Beech Lane, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because the house was built to old setback standards and current setback standards are different, the proposed location is the most reasonable location. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the placement of the house on the lot and it is a corner lot and the best place to put a screened porch would be in the back of the house in place of the current patio. The hardship results from the application of this Ordinance to the property because if the ordinance was strictly applied they would not be able to build the requested screened porch. The hardship is not the result of the applicant's own actions because the lot is a corner lot and the rear portion of the lot is very wooded, which has brought out mosquitos and the applicants have tried alternatives to this proposed plan for the property. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the construction of the screened porch would add value to the house which would increase value to the neighborhood and is very common within the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because there is no negative impact to the area and it will improve existing outdoor area for this house, seconded by Mr. Cummings. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Cuimmingd, Hayworth, Williams, Blackstock, Eckard, Marshall. Nays: None.)

- (b) BOA-15-20: **1801 CARLISLE ROAD** Phil Kleinman requests a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. **Variance:** The applicant is proposing to have a separate electrical meter for an existing pool-house. Section 30-8-11.1(G), Present Zoning-R-3 (Residential Single-family), Cross Street-Country Club Drive. **(VARIANCE GRANTED)**

Loray Averett stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on an existing detached pool-house. The property is located on the western side of Carlisle Road north of Country Club Drive and is zoned R-3 (Residential Single Family). Tax records indicate the lot contains approximately 5.05 acres. The house was constructed in 1954. The property contains a two-story dwelling and a detached swimming pool structure. The applicant's site drawing shows there is an existing power meter for the house located north of the house and west of the driveway entrance. The property is developed with infrastructure consisting of the home, concrete driveway, heavy landscaping and trees. The development and landscaping is located between the areas of the pool-building and the power meter, which is located far north of the house. The pool-house is located on the southern portion of the lot closer to Country Club Drive. The applicant has mentioned that Duke Power Company would install a new power pole in the Country Club Road vicinity located south of the applicant's pool house. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone present wishing to speak on this matter.

Phil Kleinman, the applicant, was sworn in and stated that this variance is in regard to an existing pool house that is 600 – 650 square feet and he is doing quite a bit of remodeling to the house. He is installing new HVAC in the pool house and adding pool heaters to a 65,000 gallon pool and the requirements are for a 200 amp service. There is currently a 30 amp service. The requested electrical services addition is to accommodate all the electricity related to the upgrade. In response to questions by Board members, Mr. Kleinman stated that the pool house is approximately 400 feet from the main structure. To go underground would require damages to existing landscaping, drainage lines and other existing lines from the main house. The current service is in the existing garage so it would feed the main house. He purchased the house last October so that is why the improvements are necessary at this time.

There being no one to speak in opposition, the public hearing was closed by unanimous vote.

#### **Board Comments:**

All the Board members indicated their support of this request as it appears to be a very reasonable request for this particular property.

Ms. Blackstock moved that in regard to BOA-15-20 1801 Carlisle Road, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance, unnecessary hardships will result to the property by applying strict application of the Ordinance because

the current electric meter is located near the northwest portion of the property improvements and to serve the pool extended wiring is required through, on and around current improvements and landscaping which would have to be disturbed. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the hardship results from the facts presented. The original electric meter is located too far away from where the power is needed to serve the pool house. The hardship results from the application of this Ordinance to the property because the application of the Ordinance to the property would result in the applicant being unable to serve the pool house with electricity without difficulty. The hardship is not the result of the applicant's own actions because the electric meter was installed in its current location long before the applicant purchased the property. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the additional meter will have no impact on the neighborhood, it is only to provide power to the pool house, which will not be used as a dwelling. The granting of the variance assures the public safety and welfare and does substantial justice because there will be no benefit to the public and the applicant would have no practical or feasible way to get electricity to the pool house, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Cummings, Hayworth, Williams, Blackstock, Eckard, Marshall. Nays: None.)

- (c) BOA-15-21: **1818 MADISON AVENUE** Patrick and Eileen Shannon request a variance from a minimum front setback requirement. **Variance:** A proposed front porch addition will encroach approximately 9.2 feet into a required average front setback of approximately 41.2 feet. The proposed porch addition will be setback at approximately 32 feet from the front setback line adjacent to Madison Avenue. Section 30-7-1.4(A)1)b), Present Zoning-R-3 (Residential Single-family), Cross Street-North Tremont Drive. **(VARIANCE GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed front porch to an existing single-family dwelling which will encroach approximately 9.2 feet into a required average front setback of approximately 41.2 feet. The proposed porch will be setback approximately 32 feet from the front property line adjacent to Madison Avenue. The lot is located on the north side of Madison Avenue east of North Tremont Drive. Tax records reflect the lot size is approximately 11,250 square feet or 0.27 acres and the house was originally built in 1964. The front property line is adjacent to Madison Avenue. The existing house is located 50 feet from the front property line. The dimensions for the new porch will be 9 feet wide by 35 feet long and will contain approximately 315 square feet. There were a total of three houses that were used to calculate the average front setback for the subject property. Two of the houses are located east of the subject site and one house is located west of the subject site. They are addressed as 1814, 1816 and 1820 Madison Avenue. Their setbacks averaged 41.2 feet. In 2014, Council adopted infill standards for residential single family homes and effective April 4, 2014 infill standards for residential front setbacks were implemented. The applicant is requesting to be allowed to construct a front porch which will be 32 feet from the front property line instead of the averaged setback of 41.2 feet. Chair Hayworth asked if there was anyone present wishing to speak on this matter.

Patrick Shannon, the applicant, was sworn in and stated that he is currently living at 2119 Wright Avenue in Greensboro. He and his family have not moved into this house at present. They moved into the Sunset Hills neighborhood several years ago and they really like this area. This property became available and this house was built in the 1960s, where other homes were built much earlier, so this house does not match any of the other homes in the area. They would like to build a front porch on the house and when they tried to obtain a permit they found that the setbacks have changed and a variance would be required for this project. There have been no objections by the neighbor they have talked with. It is his understanding that the contractor has spoken to other neighbors and none of them objected to the construction of the proposed front porch. There would be no adverse impact on any of the other homes in the area. In response to questions posed by Board members, Mr. Shannon stated that the proposed front porch would be 9 feet deep.

There being no one to speak in opposition, the public hearing was closed by unanimous vote.

**Board Comments:**

All the Board members indicated their support of this request as it appears to be a very reasonable request for this particular property.

Mr. Marshall moved that in regard to BOA-15-21 1818 Madison Avenue, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because the applicant would not be able to construct the proposed front porch as desired. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the existing house does not have a front porch that would fit within the neighborhood characteristics. The hardship is not the result of the applicant's own actions because they did not know of the ordinance at the time they purchased the house and the restrictions that went along with that. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the addition of a front porch would be perceived as fitting more into the neighborhood aesthetics. The granting of the variance assures the public safety and welfare and does substantial justice because there is no adverse response from the neighbors and it would be in harmony with the neighborhood, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Cummings, Hayworth, Williams, Blackstock, Eckard, Marshall. Nays: None.)

- (d) BOA-15-22: **1502 QUAIL DRIVE** Roger Keith Crabtree requests a variance for a detached building to exceed the allowable maximum building coverage. **Variance:** Based on the size of the principal dwelling, an existing detached accessory building is permitted to be 609 square feet, and has been constructed containing 1,160 square feet; thus exceeding the maximum coverage permitted by 551 square feet. Section 30-8-11.1, Present Zoning-R-5, Cross Street-North Elam Avenue. **(WITHDRAWN)**

**OTHER BUSINESS**

None

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Ms. Wood, Mr. Nimmer and Mr. Forde were acknowledged.

\* \* \* \* \*

There being no further business before the Board, the meeting adjourned at 6:25 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair  
Greensboro Board of Adjustment  
CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT**

**AUGUST 24, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Tuesday, August 24, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Jeff Nimmer, Patti Eckard, Mark Cummings, Adam Marshall, Enyonam Williams, Sarah Wood. Planning Department staff were: Loray Averett, Nicole Smith and Mike Kirkman; Counsel Tom Carruthers and Jennifer Schneier, City Attorney's Office.

Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Ms. Eckard moved to approve the minutes of the July 27, 2015 minutes, seconded by Mr. Marshall. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Smith and Mike Kirkman were sworn as to their testimony in cases heard during the meeting.

**CONTINUANCES/WITHDRAWALS**

None

**OLD BUSINESS**

None.

**NEW BUSINESS**

**1. VARIANCE**

- (a) BOA-15-22: **1502 QUAIL DRIVE** Roger Keith Crabtree requests a variance for a detached building to exceed the allowable maximum building coverage for an accessory structure. **Variance:** Based on the size of the principal dwelling, the existing detached accessory building is permitted to be 609 square feet. Although the existing building is proposed to be reduced from 1,160 square feet to 1,040 square feet, it will still exceed the maximum

coverage permitted by 431 square feet. Section 30-8-11.1, Present Zoning-R-5, Cross Street-North Elam Avenue. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a detached building to exceed the allowable maximum building coverage for an accessory structure. Based on the size of the principal dwelling, the existing detached accessory building is permitted to be 609 square feet. Although the building is proposed to be reduced from 1,160 square feet to 1,040 square feet, it will exceed the maximum coverage permitted by 431 square feet. The property is located on the east side of Quail Drive west of N. Elam Avenue and is zoned R-5. The property contains a single family dwelling with an existing detached building. Property records reflect the house was originally built in 1955. The lot contains approximately 12,362 square feet equivalent to 0.29 acres. On or around June 17, 2015, the applicant applied for a building permit to construct a front porch and a rear deck. The Zoning review point determined an existing detached building was not in compliance. There were no building permit records on file for the building. The house footprint is 1,218 square feet on the ground and the detached building footprint was 1,160 square feet. Based on zoning requirements, the applicant is permitted to have 609 square feet of detached accessory structure. Also, six feet of the building was located in a 10-foot rear easement. The easement was recorded on the original plat. A 1995 survey and a 2000 GIS aerial showed the building existing with a footprint of 520 square feet. Exhibits 3, 4, and 5 which are aerial photos dated 2000, 2007 and 2014 show that the building foot-print increased and that the building was constructed into the easement. The applicant applied to have the easement released and on or around July 13, 2015, staff received information the utilities companies would not agree to release the section of easement that contained a portion of the building footprint. The applicant agreed to remove the portion of the building that is located in the easement. The section of building to be removed is 6 feet by 20 feet for a total of 120 square feet. This will reduce the building size from 1,160 square feet to 1,040 square feet. The variance request is based on the area remaining after the removal of the portion located in the easement. The building will exceed the allowed 609 square feet by 431 square feet for a total of 1,040 square feet. The applicant had begun construction on the front porch and rear deck. On or around July 12, 2015, the building inspector placed a stop work order on the construction for the front and rear porches. Once the detached building size is resolved, the applicant may obtain his building permit and continue completion of the front porch and rear deck. Once the covered front porch permit is approved, that square footage may count towards his allowed detached building coverage. If the variance is approved for 431 square feet, when the front porch is completed, it will further reduce the 431 square foot to a lower number, approximately by 100 square feet. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Roger Crabtree, the applicant, was sworn in and presented letters from his neighbors attesting to the fact that the building has not been an issue for them and is not an eyesore. He stated that in 2000 he hired someone to start construction on a workshop. There was a fire at his house and he got a restoration work permit which was approved and followed through on all the inspections and they are currently at the end of that restoration. He did need to do some work on the front porch and the back façade so he started construction of a deck on the back to a point that it could be inspected. At that point the Inspector, Mark Stewart, made the determination that he needed a separate permit for the front porch and rear deck because it would not be covered under the interior restoration work permit that he already had. He then

applied for the front porch and rear deck permit and then that is when the zoning issue came up about the building that was constructed and completed in mid-2002. He again referred to the letters from his neighbors that the building is not a hindrance to the neighborhood as there are quite a few other structures throughout the neighborhood that are similar to the one on his property. The ordinance that was put in place in 1954 limited the amount of the accessory structure and with today's needs for additional storage he hopes the Board will consider approving his structure. The extra 6' has already been removed from the building so it will come closer to conforming to the setback requirements. It has also been inspected and the demolition permit was filed for the removal of that portion of the building.

Martin Goldfar, 1401 Coachman Drive, Waxhaw, NC, was sworn in and stated that he was not going to speak in opposition, he just wanted to ask a question out of concern. He and his brother own the house at 1500 Quail Drive, next door and they grew up at 1505 Quail Drive. His family were the first owners and it has been a great neighborhood and he appreciates Mr. Crabtree doing anything to maintain the neighborhood. He really appreciates all the improvements. He was just surprised at the size of the building but if Mr. Crabtree has gotten letters from other neighbors it sounds as if he has done his homework. He has seen the building and he has no problem with it.

There being no other speakers, the public hearing was closed by unanimous vote.

### **Board Comments:**

All the Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property and the fact that the neighbors have no complaints it seems to be a good fit for the neighborhood.

Ms. Eckard moved that in regard to BOA-15-22, 1502 Quail Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because of the size limitations of accessory structures and the fact that a portion of the accessory building was built prior to the local code requirements. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the ordinance governing the lot creates hardship by limiting personal activities and hobbies and usage of the building. The hardship results from the application of this Ordinance to the property because it creates hardship as to size restrictions and it eliminates the ability to expand the building that was already constructed on the lot. The hardship is not the result of the applicant's own actions because he did try to comply with the law by hiring a contractor to build according to the code and assumed that the work had been done properly. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the construction of the detached building would add value to the property which increases value to the neighborhood and is common within the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because it is in harmony with the general purpose and intent due to other properties that have similar accessory buildings and adds value to the current property and the neighborhood in general, seconded by Mr. Nimmer. The Board voted 6-1 in favor of the motion to grant the variance. (Ayes: Hayworth, Williams, Wood, Nimmer, Eckard, Marshall. Nays: Cummings.)

- (b) BOA-15-23: **3604 REDFIELD DRIVE** Robert and Lynn Hunt request a variance from the minimum side setback requirement. **Variance:** A proposed detached garage will encroach 5 feet into a 10-foot side setback. Section 30-8-11.1(C), Present Zoning-R-3, (Residential Single-family), Cross Street-Friendly Acres Drive. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed one-story detached garage that will encroach 5 feet into a 10-foot side setback. The property is located on the north side of Redfield Drive, south of Friendly Acres Drive and is zoned R-3 (Residential Single Family). The applicant's lot is rectangular shaped, with the exception of an angled rear lot line. The lot contains approximately 16,552 square feet. The house contains approximately 2,400 square feet. The proposed garage dimensions are 24 feet x 44 feet and will contain 1,056 square feet. The applicant is allowed to have structures up to 50 percent of the size of the footprint on the ground. Based on the square footage of the house the total detached structures on the site may not exceed 1,200 square feet. The proposed garage along with a small detached storage building as shown on the tax records, will not exceed 1,200 square feet. The lot is developed with existing infrastructure consisting of the dwelling, a detached accessory in-ground pool, driveway, landscape features, fencing, vegetative growth and trees. There is an existing carport in the location of the proposed garage. The applicant is proposing to remove the carport and build an enclosed garage. The garage will be taller than 15 feet and is required to be 10-foot from the side lot line. The existing house is a one-story house. The applicant has made mention he will have some upper floor storage but will not have a 2nd story building as defined by the North Carolina Building Code. The R-3 Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Robert Hunt, the applicant, was sworn in and stated that the currently existing carport is not useable because it sits directly behind part of the home and only one car can use it. They would like to be able to park two cars in the carport. He proposes to remove the carport and go 5 feet off the property line that runs just to the right of the grassy strip that is on the right and move the structure back just a little so they can build a two-car garage with some storage. Both his neighbors are in support of the construction of the proposed garage. With the pitch of the roof, there will be a small section at the middle, top portion of the proposed garage for some storage. The proposed garage will clean up the area and make it look nicer and the storage area will give them a place to have their hobbies and crafts. This will give them better use of their property.

There being no one other speakers, the public hearing was closed by unanimous vote.

### **Board Comments:**

All the Board members indicated their support of this request as it appears to be a structure that would fit into the neighborhood and a very reasonable request for this particular property.

Mr. Nimmer moved that in regard to BOA-15-23 3604 Redfield Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because the applicant will be forced to have a one-car garage when a two-car garage is



needed. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the unique nature of the lot as well as the peculiar triangular shape of the property. The hardship results from the application of this Ordinance to the property because it would not allow construction of the desired two-car garage. The hardship is not the result of the applicant's own actions because of the shape of the property and the existing carport were present before the applicant purchased the property. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because two-car garages are common today and would be built to current building standards. The granting of the variance assures the public safety and welfare and does substantial justice because the proposed new structure would improve the appearance of the home as well as the neighborhood, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Hayworth, Cummings, Williams, Wood, Nimmer, Eckard, Marshall. Nays: None.)

- (c) BOA-15-24: **1 DUCK CLUB COURT** D. Stone Builders, inc. requests a variance from the minimum rear setback requirement. **Variance:** A proposed single family dwelling will encroach 6.57 feet into a 25-foot rear setback. Sections 30-7-7.2 & 30-4-6.6, Present Zoning-PUD (Planned Unit Development), Cross Street-Stratton Hills Drive. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed house which will encroach 6.57 feet into a 25-foot rear setback. The property is located on the east side of Duck Club Road and south of Duck Club Court and is zoned PUD (Planned Unit Development). The property is designed to have access from a cul-de-sac street. This particular lot also has five property lines. This makes the lot unique when defining and applying minimum setbacks. The Land Development Ordinance Section 30-7-1.4 defines a rear setback as: A setback from an interior property line lying on the opposite side of the lot from the front street setback. The applicant is proposing to construct a single-family dwelling. It will encroach 6.57 feet into a 25 foot rear setback as regulated by a zoning condition. The proposed permit reflects the house will contain approximately 4,883 square feet of covered structure. The property located directly east of the subject site is vacant, but may develop for single-family homes using R-5 rear setbacks. Those setbacks are a minimum of 20 feet from the rear. The property located to the south is a large acreage tract zoned R-3 for single family residential use. A portion of the subject lot's rear lot line is adjacent to this property's established side lot line. The property located at 2606 Duck Club Road is already developed and there are no existing buildings located in the area of the existing side lot line and the subject property's rear lot line. PUD-Planned Unit Development, is primarily intended to allow a diverse mixture of residential and/or nonresidential uses and structures that function as cohesive and unified projects.

Mr. Cummings asked who is the property owner because the information provided to the Board is a little confusing. Counsel Schneier stated that Mr. and Mrs. Carr are the owners of record on the deed to the property. Mike Kirkman pointed out that building permits can be pulled by others besides the property owners, so it could be a contractor or someone else that would be involved with the construction of the home. Loray Averett shared that the Carr's did come to her office last week and did sign the variance cover sheet and application.

Chair Hayworth asked if there was anyone present wishing to speak in favor of this matter.

Marc Isaacson, was sworn in and stated that he is representing the applicants, Mr. and Mrs. Carr and Dwight Stone of D. Stone Builders. He presented booklets related to this matter and explained that they are requesting a variance of approximately 6.5 feet from a 25-foot rear setback requirement. The adjoining properties are residential, as well, and would not be impacted by the approval of this variance request. A recorded plat was included in the booklet and Lot #38 is highlighted. Two important issues that may be considered by the Board are conventional and very traditional factors that have been heard by this Board for many, many years. The configuration of this lot is unusual and unique as it has five sides and the topography of the lot is also challenging. The City has made a determination as to which property line is the rear line and which line is the side property line. The issue is caused by the fact that the rear line is located on the east side of this five-sided lot and where the home is designed, within the building envelope, it pinches the lot to a point where it is about 6.5 feet into the, what is now called the rear setback line. In regard to the side setback line, it is 33 + feet away so if these were flipped there would be no issue and they would be well within the 25 foot on the rear setback line, but this is the way the lines were determined and that is what they have to work with. Photographs of the property from different angles were also included in the booklet, showing the topography and the challenges of this lot. It sits very steep and one of the issues in designing and placing this home on this lot was to determine where the safest location is. After considerable planning and discussion the location was determined as the best location within that building envelope. There were also photographs of other homes located within the area showing the driveways and the style and shape, size and location of those homes. It is felt that the rear yard will still have ample room to serve its intended purpose. It is also felt that this request meets all the requirements of the ordinance and they hope the Board will grant the requested variance so this property can be used for the use in which it was intended.

In response to a question by Mr. Cummings, Mr. Isaacson stated that the hardship or practical difficulty results from conditions that are peculiar to the property due to the unique configuration of the lot on a cul-de-sac with 5 sides with a rear line that does not accommodate a standard residence within the dimensions of the lot as platted. The hardship results in the application of this ordinance to the property in that the rear lot line setback area is located at a point where the proposed home will encroach in the setback due to the five-sided configuration of the lot. Ms. Eckard asked if the area behind the rear setback is vacant land and wanted to know if that will be developed later? Mr. Isaacson responded that vacant property to the rear is zoned for residential single family development. He thinks that property is owned by Mack Thomason Design Builders, LLC. That property would have a separate street entrance and would be developed on its own as a separate residential community or subdivision. Those lots would be subject to a 20-foot setback and the subject property is subject to a 25 foot setback and if this variance were granted, the setback would be about 18.5 feet so a shortfall of about 1.5 feet. Ms. Eckard asked if this neighborhood is one that requires a minimum sized house to be built. Mr. Isaacson stated that there are restrictive covenants to maintain the design features and values of the properties.

Chair Hayworth asked if there was anyone present wishing to speak in opposition to this matter.

Mack Thomason, 3834 Riverview, High Point, was sworn in and stated that the proposed structure is going to be next to his dry retention pond, which makes it a less desirable lot to possible future buyers. He feels that he and the proposed developer have a short back yard and his is being infringed upon by the proposed development of the subject property. He does not think there is a hardship that the developer can complain of. He feels the developer is only trying to avoid grading costs for the property.

Mr. Nimmer asked what is the similar zoning classification now that RS-9 was? Mike Kirkman responded that R-5 is the equivalent and it is currently properly zoned for the development. The setback under this zoning would be 20 feet, if it is zoned R-5. Ms. Wood asked if Mr. Thomason has done a plat map of his whole development, and Mr. Thomason stated it has been through the City and was 99% approved and the economy dropped and the money stopped and he has been unable to progress with the development of his properties. All his lots have been drawn out and the water run-off, the setbacks, etc., and he even gave extra property, 10 extra feet, to the lots that adjoin him to the existing neighborhood that was already there. Ms. Wood asked what the average square footage of the homes that he intends to build would be? Mr. Thomason stated that they would average 60 – 65 foot wide lots and the square footage would be about 2,000 square feet and up, 2-story and a story-and-a-half homes. He builds custom homes and these would be a smaller home than he is accustomed to doing. Ms. Hayworth asked if the proposed homes to be built would increase the value of his properties and his homes. Mr. Thomason stated that he thought they would, although there may be some problems with it being a short-cut neighborhood, but it could cause problems for emergency vehicles getting into the neighborhood. Ms. Eckard asked where the entrance to his houses would be? Mr. Thomason stated that the entrance would be on Medhurst and Churchill.

In response to a question by Chair Hayworth concerning the landscaping and/or restrictions, Dwight Stone, 1909 Lafayette Avenue, stated that they developed the whole neighborhood of 46 homes. The side yard setbacks in this neighborhood are 5 feet to the property line so in some cases they can go 10 feet between homes. The average price of the homes in the neighborhood is between \$450,000 and \$700,000. The grading that was done on this lot was done to prevent having to grade the rest of the lots on this cul-de-sac. Once you get into a cul-de-sac, if you cut one lot down extremely low, you wind up having to cut everything in the whole cul-de-sac. The 5-sided lot does present a problem to builders. Sometimes they do not know what is to be the rear lot and that does cause a hardship in a lot of cases. He has empathy for Mr. Thomason, since he has had his property for a number of years and has been unable to develop it. He feels that the proposed development will help Mr. Thomason and would certainly not hurt him in his development. He hopes the Board will grant the requested variance.

Chair Hayworth asked if there are any restrictions or conditions on the landscaping of these lots? Mr. Stone stated that they imposed restrictions, themselves, on the landscaping and if you look through the neighborhood you will see in the side and rear yards, they are very heavily landscaped with vegetation to add buffer. He owns all the lots in this cul-de-sac and he would not do anything that he thought was going to impact the property values of his and adjacent properties. In asking for the variance he knows there will be no declining value of other properties.

Mr. Cummings pointed out that in some cases the grade or slope of a property can tend to cause a problem with certain building lots. He asked if the developer has spoken with the property owners, the Carrs, about any concerns that they may have about the grade of this particular lot? Mr. Isaacson stated that the Carrs have indicated that if the variance is approved they are very happy with the way the property will come out. This is what they want and what they prefer. He pointed out that this particular lot has already been graded significantly, so there has already been quite a bit of work done to prepare it to get it to this point. Grading and site development are all related to a number of issues and the City has some control over that.

Ms. Eckard asked if Mr. Stone has an alternative plan for the property if the variance is not granted? Mr. Stone stated that with all the lots in this cul-de-sac, if you cut the lots further down, even back on the property line, where Mr. Thomason's property is located, a retaining wall would have to be built because the lot would be cut down below the grade of his lot, so it would impact the lots within the cul-de-sac, but also Mr. Thomason's lots. Ms. Wood asked what the elevation of the front of the lot is and the finished floor of the pad of the house? Mr. Stone stated that if you take the street elevation to where the top of the lot is located and graded, it would probably be about 6 feet and a finished floor on top of that is typically about 28 inches to 36 inches, depending on the height of the crawl space of the home. It would have a similar elevation to the other homes in the neighborhood. This house was designed for the owners and this particular plan has not been built before. Ms. Wood asked why the house was not rotated or built to conform to the lot? Mr. Isaacson stated that he feels that the design fits within the building envelope, setbacks are a different matter, but the alignment of the home is really what is causing the issue. They are trying to center the home on the lot and face on the cul-de-sac properly so that it looks in keeping with the design and in harmony with the other homes in the area.

Mack Thomason returned to the podium to speak in rebuttal and stated that on the issue of centering the house, every drawing they have sent him, the house is centered and there is very little room to twist a house of this size on that sort of lot. It is basically put in parallel to the curb or it would look out of kilter. He would question that the pad of the house is only 6 feet.

There being no one to speak in opposition, the public hearing was closed by unanimous vote.

### **Board Comments:**

Ms. Wood stated that she would not be supporting the request because this is a design flaw of the house and putting it on the lot and not necessarily a lot problem. The rest of the Board members indicated their support of this request as the lot creates a hardship for the applicant and this seems to be the best location for the proposed home. It seems that the home owners are satisfied with the grading. Because of the odd shape of the lot, the house would have to be centered and it seems the developer is being diligent in the design and it should not have a negative impact on the property owner to the rear.

Mr. Cummings moved that in regard to BOA-15-24, 1 Duck Club Court, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because the proposed residence will be located too close to a steep area which would make it unsafe. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property lot has five sides which makes construction difficult. The hardship results from the application of this Ordinance to the property because the rear line setback is located at a point where the proposed home would encroach in the setback due to its 5-sided shape. The hardship is not the result of the applicant's own actions because the applicant did not design the lots. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the variance will allow the structure to be close to the other 20 foot setbacks in the general area. The granting of the variance assures the public safety and welfare and does substantial justice because it will allow placement of homes

and a driveway in a safe location, seconded by Ms. Williams. The Board voted 6-1 in favor of the motion to grant the variance. (Ayes: Hayworth, Cummings, Williams, Nimmer, Eckard, Marshall. Nays: Wood.)

The Board took a short break from 7:31 until 7:37 o'clock p.m. Mr. Cummings left the meeting at 7:30 p.m.

### **SPECIAL EXCEPTION**

- (a) BOA-15-25: **920 OMAHA STREET** Clifton Ray requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a family care home separation encroachment from the current one-half mile development spacing standard. **Special Exception Request #1:** The family care home is proposed to be 860 feet from (6 or less persons) another family care home, (6 or less persons) located at 618 Broad Avenue when 2,640 feet is required. **Special Exception Request #2:** The family care home will also be 2,206 feet from (6 or less persons) another family care home, (6 or less persons) located at 408 Andrew Street when 2,640 feet is required. Present Zoning-R-5, Cross Street-Julian Street. **(DENIED)**

Nicole Smith stated that the applicant is proposing to locate a family care home which is too close to two existing family care homes. Special Exception Request #1: A The family care home is proposed to be 860 feet from (6 or less persons) another family care home, (6 or less persons) located at 618 Broad Avenue when 2,640 feet is required. Special Exception Request #2: The family care home will also be 2,206 feet from (6 or less persons) another family care home, (6 or less persons) located at 408 Andrew Street when 2,640 feet is required. The lot is located on the west side of Omaha Street north of Julian Street and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at this location and it is too close to two other existing family care homes which have been described in the requested action section. Privilege license records, along with State records reflect both of the existing family care homes are in operation and required renewals are in compliance. Staff recently visited the sites and the homes were occupied. Both existing homes are located south and west of the proposed location. The two existing homes were too close to meet spacing requirements. The home at 408 Andrew Street was granted a Special Exception from an existing home at 618 Broad Avenue at the November 28, 2005 BOA meeting. The proposed family care home location is separated from the home at Broad Avenue by other single-family homes and two streets. It is separated from the home located at Andrew Street by a larger network of single family homes and Martin Luther King Jr. Drive which is classified as a thoroughfare street. The R-5, Residential Single Family District is primarily intended to accommodate low density single family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Chair Hayworth asked if there was anyone present wishing to speak in favor of this matter.

Clifton Ray, 4707 Land Road, was sworn in stated that he could not hear very well, so he would let Mr. Milton speak for him. They are trying to get a family care home for 920 Omaha Street. When he first purchased the house he talked to Ms. Milton and she wanted to use the house for that purpose. He has tried to renovate the house the way she wanted it, so it can be used for a

family care home. He has spent about \$40,000 fixing the house and putting new flooring and bathrooms in the remodeling project. They then found out that there was another home on Broad Avenue that was too close, by 680 feet, to this property to be able to have the planned family care home at this location.

Howard Milton, High Point, NC, was sworn in and stated that the other two facilities that are located around the property on Omaha Street are for juvenile residents and they plan to only have residents that are 50 years old and older. He and his wife have had family care homes for many years but only have adults 50 years and older. They currently have a home in High Point and another one in Reidsville and are hoping to establish this new home, here in Greensboro. Mr. Milton answered questions posed by the Board members.

Chair Hayworth asked if there was anyone present wishing to speak in opposition to this matter.

Janeka Smalls, 2119 Liberty Valley Road, was sworn in and stated that she is strongly opposed to this request. She owns the property that is adjacent to 920 Omaha Street as well as several other properties on Omaha Street. The home located at 920 Omaha Street has had a long history of undesirable activity which includes violence, prostitution, and drugs. It was previously used as a rooming house where individual rooms were leased out and it never went through an approval process. There was also another rooming house on this street that also had the same problems and types of activities. Douglas Park is located in the area and there have been a lot of problems within that park. She is trying to clean up the neighborhood and asked that this request be denied as she does not want a prison situation in her neighborhood. Adjacent to this property there is the family of a disabled veteran that has 5 little girls and a little boy and she is concerned about their safety.

Wanda Autrey, 913 Omaha Street, was sworn in and stated that she is a retired veteran and she purchased 922 Omaha Street in 1985 and she is appalled to hear that people do not respect people with disabilities, especially related to PTSD and the side effects of people with mental conditions. There are problems with prostitution and drug problems in this particular area. She is trying to clean up this area, as well as the park. This is not a community where you would want to mix mentally ill persons with the general public. If someone checked on the history of this particular house, they would find that it was condemned because there was so much criminal activity there. She pleaded with the Board to deny this request because the demographics of this neighborhood attract the worst type of behavior.

In rebuttal, Mr. Milton stated that he is not new to running this type of facility that he runs as a business and there are a lot of state regulations that he must comply with. There are people that want to do the right thing and he hopes the Board will consider granting the request. In regard to visitors, the residents are only allowed to have visitors very infrequently, usually on holidays, and there is a list of visitors that would be allowed.

In response to questions, Mr. Ray stated that he would like to either sell the property or rent it to these people for the family care home.

Ms. Smalls returned to the podium and stated that she stands firm in her original request to deny this request. There has already been one exception in the neighborhood. Ms. Autrey stated that she was one of the inspectors of this type of home and she knows the history of these type of homes. She does not feel that this is the type of facility that should be approved for the good of all of the community.

There being no one else to speak in opposition, the public hearing was closed by unanimous vote.

### **Board Comments:**

All the Board members indicated that they would not support this request because there are already other like homes in the area and because of the neighborhood members relaying their opposition to this use in their neighborhood. It was also pointed out that the age of the residents could change at some point in the future, from older adults to juveniles or younger adults, causing additional problems in the area. Chair Hayworth pointed out that the separation requirements are in place for a reason and one exception has already been granted and she would not support this request. Ms. Wood stated that she feels that if they are not allowed to use this property as a family care home, any other use may be an undesirable use also, which could actually be a worse scenario.

Ms. Wood moved that in regard to BOA-15-25, 920 Omaha Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Special Exception granted based on the following: A Special Exception may be granted by the Board if evidence presented by the applicant persuade it to reach each of the following conclusions: The Special Exception is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it replaces another home which has closed due to deterioration and the house is in better condition. The granting of the Special Exception assures the public safety and welfare and does substantial justice because the owner states he has done extensive remodeling of this property and will have more improvements to make. Also this is a monitored home that will be watched and cared for, seconded by Mr. Marshall. The Board voted 2-5 and the Special Exception was **denied**. (Ayes: Wood, Marshall. Nays: Hayworth, Cummings, Williams, Nimmer, Eckard.)

### **OTHER BUSINESS**

Chair Hayworth stated that at the next meeting the Board will need to nominate and vote on a Vice Chair to replace Mr. Forde. Members need to give some thought to their possible nominations.

### **ACKNOWLEDGEMENT OF ABSENCES**

There were no absences.

### **ADJOURNMENT**

There being no further business before the Board, the meeting adjourned at 8:40 p.m.

Respectfully submitted,

Cyndy Hayworth, Chairwoman  
Greensboro Board of Adjustment.

CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
SEPTEMBER 28, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, September 28, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Chuck Truby, Patti Eckard, Mark Cummings, Adam Marshall, Enyonam Williams, Sarah Wood. Planning Department staff were: Loray Averett, Nicole Smith and Code Enforcement Ron Fields; and Jennifer Schneier, City Attorney's Office.

Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Mr. Cummings moved to approve the minutes of the August 24, 2015 minutes, seconded by Ms. Wood. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Smith and Code Enforcement Ron Fields were sworn as to their testimony in cases heard during the meeting.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that BOA-15-28, 4683 Long Valley Road has been withdrawn by the applicant.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**VARIANCE**

- (a) BOA-15-26 **1816 MARION STREET** Britney Owens request variances from setback requirements that regulate locations of poultry coops and bee hives as accessory to single-family dwellings. **Variance #1:** Poultry coops are required to be 50 feet from any property line. The existing poultry coop is located 43 from the rear lot line and 37.5 feet from a side lot line and is encroaching 7 feet into a rear setback requirement and 12.5 feet into a side setback requirement. **Variance #2:** Bee hives are required to be 50 feet from any property line. The existing bee hive is located 13 feet from the rear lot line and 43 feet from a side lot line and is encroaching 37 feet into a rear setback requirement and 7 feet



into a side setback requirement. Section 30-8-11.3(B), Present Zoning-R-5 (Residential Single-family), Cross Street - Oak Street. **(GRANTED)**

Loray Averett stated that the applicant is requesting variances from setback requirements that regulate locations of poultry coops and bee hives as accessory to single-family dwellings. Variance #1: Poultry coops are required to be 50 feet from any property line. The existing poultry coop is located 43 from the rear lot line and 37.5 feet from a side lot line and is encroaching 7 feet into a rear setback requirement and 12.5 feet into a side setback requirement. Variance #2: Bee hives are required to be 50 feet from any property line. The existing bee hive is located 13 feet from the rear lot line and 43 feet from a side lot line and is encroaching 37 feet into a rear setback requirement and 7 feet into a side setback requirement. The property is located on the north side of Marion Street, south of Oak Street and is zoned R-5 (Residential Single Family). The applicant's lot is rectangular shaped. The lot contains approximately 13,503 square feet. The lot is developed with existing infrastructure consisting of the dwelling and a detached accessory building with landscape features, vegetative growth and trees. The applicant has a chicken coop and a bee hive located in the rear yard. They were established too close to the property lines. On or around July 27, 2015, the owner was issued a Notice of Violation to comply with setback requirements. On or around August 25, 2015, the owner filed a variance request concerning the locations of the poultry coop and the bee hive/colony. The R-5 Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Brittany Owens, 1816 Marion Street, the applicant, was sworn in and stated that she has notarized statements from her neighbors in support of the variance as well as additional photographs to present to the Board. She explained the photos in detail and stated that when she built the chicken coop and placed the bee hive, she placed them according to the 25 foot standard as opposed to the 50 foot standard. She is actually closer to one of her neighbors and that neighbor stated that he has no objection to the placement of the chicken coop and bee hive where they currently are. In response to a question by Mr. Cummings, the applicant stated that the neighbor that complained is on the opposite side of her property, away from the bee hive and chicken coop structures which are 60 feet away and the neighbor cannot see either structure from her property. She also cannot hear the chickens as there is no rooster on the property. Mr. Truby asked if there has been a problem with the chickens running loose on the property. The applicant responded that the chickens are essentially fenced in with three different fences. She has been told by Inspector Fields that the violation was not due to noise or smell, but due to the setbacks only. Her chickens are unable to fly because she clips their wings and as far as she knows there has only been one time that one escaped and it was caught by her neighbor, Mr. Fulson, who put it back into the coop area.

Sam Fulson, 1812 Marion Street, was previously sworn in and stated that he lives next door to the applicant and he does not have any opposition to the placement of the chicken coop or bee hive. In response to a concern by Ms. Eckard, he stated that his young daughter visits the property and walks close to the bee hive and has never had a problem with them or the chickens. He has also never noticed any offensive odors from the chicken coop. In regard to noise, there are more dogs barking in the area than hearing anything from the chickens.

There being no other speakers in favor or in opposition, the public hearing was closed by unanimous vote.

**Board Discussion/Comments:**

The Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property. The fact that only one of the neighbors had a complaint and is not present to voice that complaint, it seems to be a good fit for the neighborhood.

Ms. Wood moved that in regard to BOA-15-26, 1816 Marion Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because the property is not large enough to conform to the Ordinance. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property with the width of the lot, the chicken coop structure had to be moved closer than 50' from one side to the other. The hardship results from the application of this Ordinance to the property because it creates hardship as to size restrictions and it eliminates the ability to use the property that was recently constructed on the lot. The hardship is not the result of the applicant's own actions because again, the width of the lot did not allow the chicken coop structure to be placed elsewhere on the property. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it is a sustainable feature of the property and is quiet, clean and is not an intrusion to the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because with the distance from other properties and the green borders to the property it does keep a safe border between the properties, seconded by Ms. Eckard. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Hayworth, Williams, Wood, Cummings, Truby, Eckard, Marshall. Nays: None.)

- (b) BOA-15-27: **516 WOODLAND DRIVE** Charles Richards Jones, III requests a variance from a minimum front setback requirement. **Variance:** A proposed front porch addition will encroach approximately 3.62 feet into a required average front setback of approximately 61.54 feet. The proposed porch addition will be setback approximately 57.92 feet from the front setback line adjacent to Woodland Drive. Section 30-7-1.4(A)1b), Present Zoning-R-5 (Residential Single-family), Cross Street-Latham Road. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed front porch to an existing single-family dwelling which will encroach approximately 3.62 feet into a required average front setback of approximately 61.54 feet. The proposed porch will be setback approximately 58 feet from the front property line adjacent to Woodland Drive. The lot is located on the north side of Woodland Drive north of Latham Road. Tax records reflect the lot size is approximately 11,691 square feet square feet. The house was originally built in 1966. The front property line is adjacent to Woodland Drive. The existing house is located approximately 66 feet from the front property line. The dimensions for the new porch will be 8 feet wide by 32.8 feet long and will contain approximately 262 square feet. There were a total of four houses that were used to calculate the average front setback for the subject property. Two of the houses are located east of the subject site and two were located west of the subject site. They are addressed as 520, 518, 514 and 512 Woodland Drive. Their setbacks averaged 61.54 feet. In 2014, Council adopted infill standards for residential single family homes and effective April 4, 2014 infill standards for residential front setbacks were implemented. The applicant is requesting to be allowed to construct a front porch which will be 58 feet from the front property line instead of the averaged setback of 61.54 feet. The R-5 Residential

Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Charles R. Jones, III, the applicant, 516 Woodland Drive, was sworn in and stated that staff has done a great job of putting together the information package and it is very straight forward and precise. The only thing he would add is that the intent is to add a porch which would allow his family to enjoy the neighborhood and more of the outdoor experience. It will be a significant enhancement to the aesthetic of the house as well as the value of the house. He has had no opposition to his plans for the property and they neighbors seem to support this project.

Steven Jobe, the architect, 3314 Watauga Drive, was sworn in and stated that he feels that this will highly enhance the aesthetics of the house and the neighborhood as a whole. It would cause no harm to anyone.

There being no other speakers in favor or in opposition, the public hearing was closed by unanimous vote.

Mr. Cummings asked what was the purpose of the infill standards? Loray Averett stated they were recently adopted to maintain consistent setbacks concerning compatible construction for the neighborhood average setbacks. The policy originally started when the Westridge NCO was done and a few years later, a proposal from another neighborhood of similar interest followed. City Council suggested that front average setbacks be established for all single-family residential districts associated city-wide; thus a text amendment was proposed and was adopted by Council in April 2014. Nicole Smith added that there were also several focus groups that met and were representative of multiple neighborhoods across the City's jurisdiction. It was the result of a failed conservation overlay for a neighborhood but the consensus of the group was that the direction of City Council was to implement the average front setback to preserve and protect the older residential properties in the area.

### **Board Discussion/Comments:**

The Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property and the fact that the neighbors have no complaints it seems to be a good fit for the neighborhood.

Ms. Eckard moved that in regard to BOA-15-27, 516 Woodland Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because complying with the new Ordinance concerning average front setbacks would prevent the homeowner from being able to make proper use of his land and to build a front porch. If the previous ordinance were still in place it would have been in compliance. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the hardship results from the distance of the setbacks of the subject houses that were used to calculate applicable average setbacks. The hardship results from the application of this Ordinance to the property because if the previous ordinance were still in place, the porch would be within the setbacks required and the porch could be

built. The hardship is not the result of the applicant's own actions because the houses are existing and they were set back according to the Ordinance when they were built. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because several houses on both sides of the street, while not considered to be those subject houses, do range in closer street setbacks and are closer to the front property lines. This particular property with the new front porch should blend in and should enhance the property as viewed from the street. The granting of the variance assures the public safety and welfare and does substantial justice because it will not detract from the setting of the street and should blend in nicely and add value to the neighborhood, seconded by Mr. Marshall. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Hayworth, Williams, Wood, Cummings, Truby, Eckard, Marshall. Nays: None.)

- (c) BOA-15-28: **4683 LONG VALLEY ROAD** Patrick Diamond, Attorney on behalf of Darryl and Lauren Cox requests a variance from a minimum front setback requirement. **Variance:** A proposed single-family dwelling will encroach approximately 5.75 feet into a required average front setback of approximately 122.25 feet. The proposed dwelling will be setback approximately 116.50 feet from the front setback line adjacent to Long Valley Road. Section 30-7-1.4(A)1b), Present Zoning-R-3 (Residential Single-family), Cross Street-Broadleaf Road and Fleming Road. **(WITHDRAWN)**
- (d) BOA-15-29: **4209-A HENDERSON ROAD** Dana Dunn requests a variance from a minimum front setback requirement. **Variance:** A proposed single-family dwelling will encroach approximately 8.02 feet into a required average front setback of approximately 58.02 feet. The proposed dwelling will be setback approximately 50 feet from the front setback line adjacent to Henderson Road. Section 30-7-1.4(A)1b), Present Zoning-R-3 (Residential Single-family), Cross Street-West Friendly Avenue. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed single family dwelling which will encroach approximately 8.02 feet into a required average front setback of approximately 58.02 feet. The proposed dwelling will be setback approximately 50 feet from the front setback line adjacent to Henderson Road. The property is located on the western side of Henderson Road south of West Friendly Avenue and is zoned R-3. The lot is rectangular shaped and contains approximately 16, 988 square feet. There are two house located south of the subject site and two houses located north that may be used in calculating the average setback for the subject lot. The average setback was determined using the four houses nearest the subject site on the same block face. The house located at 4205 Henderson Road is approximately 54 feet from the front property line, the house located at 4207 Henderson Road is approximately 55.4 feet from the front property line, the house located at 4209 Henderson Road is 65.5 feet from the front property line and the house located at 4213 Henderson Road is setback 61 feet; thus the average setback for 4209 A Henderson Road is 58.02 feet. The applicant is requesting to be allowed to construct his house 50 feet from the front property line instead of the average setback. The applicant has made mention that he is also trying to protect critical root zones on some of the existing trees located on the lot. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Dana Dunn, the applicant, #14 Old Saybrook Drive, was sworn in and stated that the primary reason they are requesting a variance that will help save two majestic Oak trees that are part of the essential character of the neighborhood. They have worked carefully to design a home that is neighborhood appropriate that will snake around the existing trees as much as possible. They need to be a little closer to the street to be able to complete this construction and save the trees.

Bruce Conaway, #14 Old Saybrook Drive, was sworn in and presented a model of the house, showing the placement of the existing trees. He also presented other drawings and stated that they worked closely with the structural engineers and it was difficult for them to design while including the importance of the two Oak trees that would be off the rear of the house. The site plan demonstrated where the critical root zone is located and they will be placing individual piers so that most of the soil is left alone.

Ms. Wood stated that she is concerned about the house next door which has a white fence on their property and wanted to know if that fence is on the property line. Mr. Conaway stated that the white fence is right on the property line.

In response to a question by Mr. Cummings concerning trees that would be disturbed, Mr. Conaway stated that there is one Cedar tree that is under the larger canopy that would be lost. They have saved as many trees as they possibly could. He further explained that there would be 3,000 square feet of structure that is air conditioned and some un-air conditioned areas.

There being no other speakers in favor or opposition, the public hearing was closed by unanimous vote.

### **Board Discussion/Comments:**

Mr. Cummings stated that he would not support the request because he does not see how the Board can determine that the applicant is not creating the hardship themselves. Here, there are 4 houses that have already set the averages and this is an empty lot and it seems that they could still comply with the Ordinance by constructing a smaller house. The other Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property and the fact that the neighbors have no complaints it seems to be a good fit for the neighborhood. The applicant is trying to save some significant trees on the lot and this drastically outweighs any ill effects that coming forward on the lot with the construction would create.

Ms. Williams moved that in regard to BOA-15-29, 4209-A Henderson Road, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because the property owners will not be able to save the two large Oak trees in the back yard. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because there is a slope on the property and a critical root zone that both impact structural design. The hardship results from the application of this Ordinance to the property because they would be required to remove the mature trees. The hardship is not the result of the applicant's own actions because the property owners are customizing the new home to best fit on the lot and save the existing majestic trees. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it allows for the best use of the property while saving the significant trees. The granting of the variance

assures the public safety and welfare and does substantial justice because it allows the property owners to build a custom home that preserves the two significant trees in the back yard, seconded by Ms. Eckard. The Board voted 6-1 in favor of the motion to grant the variance. (Ayes: Hayworth, Williams, Wood, Truby, Eckard, Marshall. Nays: Cummings.)

- (e) BOA-15-30: **3504 TANGLEWOOD DRIVE** Lawrence and Jennifer Schell request a variance from a minimum side setback requirement. **Variance:** A proposed attached garage/room addition will encroach 5 feet into a 10-foot side setback. Section 30-7-3.2-Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Forest Hill Drive. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed attached garage/addition which will encroach 5 feet into a 10-foot side setback. The property is located on the north side of Tanglewood Drive east of Forest Hill Drive and is zoned R-3. The applicant is proposing to remove a section of the dwelling on the eastern side of the lot and construct an attached garage/addition. The previous width of the portion to be removed was 12 feet. The proposed addition will be 24 feet in width. Guilford County records reflect the house was constructed in 1955. The house is one-story with a basement. The lot is rectangular shaped. The width is 100 feet and the depth is 200 feet containing approximately 20,000 square feet. The property is developed with full infrastructure, mature trees and heavy landscaping. The property elevations slope downwards from behind the house towards the rear lot line. The house was originally built to be mostly centered on the lot. Staff would like to note that a variance was granted to a detached carport located next door at 3500 Tanglewood Drive. This material and minutes for this address are included as Exhibit number 5. The variance was granted in 1976 for the carport to be 4 feet from the side lot line of that property. It appears that the proposed garage/addition and the existing carport next door will be aligned based on the setbacks of these structures. If the variance is granted for the proposed garage/addition the building inspections division may be reviewing the structures for certain material types based on material fire ratings depending on actual separation distances between the structures. The R-3, Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential developments. The overall gross density in R-3 will typically be 3.0 units per acre or less

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Larry Schell, 3504 Tanglewood Drive, the applicant, was sworn in and stated that they wish to add a two-car garage, a master bedroom and bathroom, as well as put the existing sunroom back in place. The width of the addition is 24 feet to accommodate a two-car garage. In speaking with the builders that would be the minimum width that is needed for the two-car garage to allow access into and out of the property. They looked at putting an addition on the back of the home but the property slopes down to the right and to do that they would end up placing a 6 foot concrete wall in the back and would have to fill that in to build an addition. This would not be feasible. They have also looked into putting an addition on the left-hand side of the house but to make the addition for the bedroom and bathroom and keep the existing 3-bedroom, 2 bath they were not able to put an addition on the left side of the house. The only option they have is to place the addition on the right-hand side of the house, that would allow for the addition of the master bedroom and bathroom, as well as the two-car garage. With the proposed addition the square footage would be 2,300 square feet which is in line with other homes in this area. He has spoken with all the neighbors and no one voiced any objection to the proposed addition. In response to a question by Ms. Wood concerning the distance of the proposed addition from the east wall to the neighbor's carport, Mr. Schell stated that if everything is

aligned the way it should be, it would be 9 feet from that carport. They plan to use vinyl siding that would match the rest of the house for the addition.

There being no other speakers in favor or in opposition to the request, the public hearing was closed by unanimous vote.

**Board Discussion/Comments:**

All the Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property and the fact that the neighbors have no complaints it seems to be a good fit for the neighborhood.

Mr. Marshall moved that in regard to BOA-15-30, 3504 Tanglewood Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because they would not be able to construct the garage as desired as well as bedroom and bathroom. The lot size and rectangular shape dictates that this is the ideal spot for the garage to be placed. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the topography of the lot slopes downward in the rear creating difficulty for any new building footprint. The hardship results from the application of this Ordinance to the property because without the setback restrictions they could build the garage as desired. The hardship is not the result of the applicant's own actions because the homeowner did not construct the home or the design of the lot layout. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the end of the garage would still remain 5 feet from the property line and would also be in the 9 foot buffer between the neighbor's structure. Also a similar variance was granted for the neighbor's carport. The granting of the variance assures the public safety and welfare and does substantial justice because the neighbor that shares a property line is not in opposition to the planned project and the project increases the livable square footage and would increase the property values and would not detract from the character of the neighborhood, seconded by Mr. Truby. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Hayworth, Williams, Wood, Truby, Cummings, Eckard, Marshall. Nays: None.)

**OTHER BUSINESS:**

***Nomination and vote for election of a Vice-Chair***

Mr. Marshall nominated Ms. Eckard to serve as Vice-Chair, seconded by Mr. Truby.

Ms. Wood nominated Mr. Cummings to serve as Vice-Chair, seconded by Mr. Cummings.

After a vote was taken, it was determined that Ms. Eckard would serve as Vice-Chair of the Board of Adjustment.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Ms. Blackstock was acknowledged.

**ADJOURNMENT**

There being no further business before the Board, the meeting adjourned at 7:21 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair  
Greensboro Board of Adjustment.

CH/jd



**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
OCTOBER 26, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday October 26, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Patti Eckard, Mark Cummings, Enyonam Williams, Chuck Truby and Deborah Bowers. Planning Department staff were: Loray Averett and Nicole Smith; and Jennifer Schneier, City Attorney's Office.

Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

Chair Hayworth welcomed the newest Board member, Deborah Bowers.

**APPROVAL OF MINUTES**

Ms. Eckard moved approval of the September 2015 meeting minutes, as submitted, seconded by Ms. Williams. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett and Nicole Smith were sworn in as to their testimony for cases involved in today's meeting.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that there were no continuances or withdrawals.

**OLD BUSINESS**

**NEW BUSINESS**

**VARIANCE**

- (a) BOA-15-31: **3304 REGENTS PARK LANE** John and Louise Galvin request a variance from the minimum side setback requirement. **Variance:** A proposed attached carport will encroach 5 feet into a 10-foot side setback. Section 30-8-11.1(C), Present Zoning-R-3, (Residential Single-family), Cross Street-Lawndale Drive. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed attached carport which will encroach approximately 5-feet into a required 10-foot side setback. The lot is located on

the northwestern side of Regents Park Lane east of Lawndale Drive. Tax records reflect the lot size is approximately 17,424 square feet. The house was originally built in 1972. The existing house is constructed more centered on the lot with an existing driveway, established landscaping and fencing. It is a two-story house with an attached garage. The applicant is proposing to construct an attached carport adjacent to the garage side. The carport will be 15 feet wide by 22 feet deep for a total of 330 square feet. The lot is rectangular shaped with a portion of an angled side lot line on the opposite side of the lot. There is also a five foot easement located on the opposite side of the lot. The lot depth is about twice the area of the lot width which creates lesser buildable space to accommodate proposed structures from side to side on the lot. The applicant has mentioned the proposed location and design of the carport will complement the existing architectural style of the existing house. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

John Galvin, the property owner, 3304 Regents Park Lane, was sworn in and stated that he would like to build an attached carport on the right side of his property as the existing garage is really not large enough to accommodate a vehicle. He has removed a tree to be able to access the carport. He has spoken to his neighbor and they have no opposition to this request. The house was built in 1972 and if he complies with the Ordinance he would not be able to build the proposed carport and he would not be able to use his property for the reasons it is intended. Staff has already given the background on this issue and he hopes the Board will grant the variance he is requesting.

In response to questions by the Board members, the applicant stated that the carport would be constructed of materials with brick columns and roofing shingles and roof line that match the existing house. The attached garage was built at the same time the house was built. There are other homes in the area that have added carports to their property. The vehicles are getting some damage from the maple trees on the lot. He feels that he would only be able to get one car in the carport.

There being no one speaking in opposition to this matter, the public hearing was closed by unanimous vote.

### **Board Discussion:**

All the Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property.

Ms. Eckard moved that in regard to BOA-15-31, 3304 Regents Park Lane, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because there would not be enough angle to build the carport if it was strictly enforced since the carport would only be 5 feet from the property lines and the current ordinance calls for 10 feet. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because due to the lot width versus the lot depth it is an unusual placement of the house on the lot. The carport will stay compatible with the architectural style of the house, while also providing reasonable size to maneuver a one-car comfortably in and out of the proposed carport space. The hardship results from the application of this Ordinance to the property because strict application of the ordinance causes the hardship. The hardship is not the result of the applicant's own actions because the

applicant did not build the original house or design the layout of the driveway or the landscaping and fencing. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the owner wants to preserve harmony in the neighborhood and construct a carport which is comparable with others in the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because it will not decrease the values of the neighborhood homes and should be in line with other homes in the neighborhood, seconded by Mr. Truby. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Cummings, Williams, Truby, Eckard, Bowers. Nays: None.)

### **SPECIAL EXCEPTION**

- (a) BOA-15-32: **3020 RANDLEMAN ROAD** Hui Ping Peng requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a family care home separation encroachment from the current one-half mile development spacing standard. ***Special Exception Request:*** The family care home (6 or less persons) is proposed to be 2,529 feet from another family care home, (6 or less persons) located at 3909 Bears Creek Road when 2,640 feet is required. Present Zoning-R-5, Cross Street-West Vandalia Road.  
**(GRANTED)**

Loray Averett stated that the applicant is proposing to operate a family care home which is too close to an existing family care home. A family care home location is proposed to be 2,529 feet from another family care home, located at 3909 Bears Creek Road when 2,640 feet is required. The lot is located on the western side of Randleman Road south of West Vandalia Road and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at this location and it is too close to another existing family care home located at 3909 Bears Creek Road. Privilege license records in conjunction with State records reflect the existing family care home is in operation and required renewals are in compliance. Staff recently visited the site and the home was occupied. The existing home is located north and west of the proposed location. The proposed family care home location is separated from the home on Bears Creek Road by numerous homes and streets, heavy vegetative areas, West Vandalia Road which is classified as a major thoroughfare and numerous multi-family units. The R-5, Residential Single Family District is primarily intended to accommodate low density single family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less  
Chair Hayworth asked if there was anyone wishing to speak on this matter.

Ralph Weethee, 3511 Coltswood Terrace, was sworn in and stated that he plans to rent this house from the owner for use as a family care home.

Hui Peng, the property owner, #2 Charisman Court, was sworn in and stated that she is not opposed to the proposed use of this property as a family care home. The house is run by a property manager.

Mr. Weethee further stated that he plans to open this home for adults with mental illness. He has been working with psychotherapy services for the last 9 years and he sees a major need for this type of quality group homes in the area. There are other group homes but not necessarily for this particular type of need. This would encourage a family atmosphere with activities and structure for the clients. He would have to follow all the rules and regulations required by the state to run this home. The house is located near a bus route, which would be convenient for his client's use and there is a lot of shopping in the immediate area.

There being no one speaking in opposition to this matter, the public hearing was closed by unanimous vote.

### **Board Discussion:**

Chair Hayworth stated that she is concerned that Mr. Weethee does not have practical experience in running this type of group home and although there would be requirements that have to be met by the Department Health and Human Services and City Inspectors, she does have concerns that there may be insurmountable issues to be overcome. Even though they are her concerns, she will support the request. Ms. Bowers stated that it seems that the required distance is pretty small and given that the other group home in the vicinity caters to teenage females, and not adults, she feels that the potential for cloistering themselves is also very small and meets the rationale behind family care homes and the reasons for keeping them some distance apart. She would support the request. Ms. Wood stated that she has concerns about the distance between the homes because even though West Vandalia Road is a thoroughfare, it is not serving major development in the area, as some of the other thoroughfares that do serve more populated and commercial areas. She is not comfortable with the distance between the two homes and would not support the request. Ms. Williams feels that the distance is negligible and would not cause a problem for the rest of the neighborhood, so she would support the request. Ms. Eckard stated that she does not have a concern about the distance and would support the request because they are different age groups. Mr. Truby stated that he would echo Ms. Eckard's comments and would support the request. Mr. Cummings stated that he would also support the request.

Ms. Williams moved that in regard to BOA-15-32, 3020 Randleman Road, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Special Exception granted based on the following: A Special Exception is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because there are numerous streets, homes and vegetative areas between the two homes and this home would house adults instead of teens, which is different from the existing group home that is in the area. The granting of the Special Exception assures the public safety and welfare and does substantial justice because this property is only 111 feet inside the required 2,640 foot radius, and therefore, the distance is far enough to allow an exception in this case, seconded by Ms. Eckard. The Board voted 6-1 in favor of the motion to grant the variance. (Ayes: Hayworth, Williams, Truby, Cummings, Eckard, Bowers. Nays: Wood.)

### **OTHER BUSINESS**

Loray Averett stated that in the near future, staff will be updating the Board members' policy rules and regulations and a draft copy will be presented to Board members via an email document and a paper copy will be in the November mail-out packet. There will be a discussion at the November meeting on whether there are any needed changes.

Counsel Schneier stated that at the August meeting regarding #1 Duck Club Court, which was upheld by the Board, that is now on appeal in Superior Court will be heard Thursday, November 5<sup>th</sup>, 2015.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Ms. Blackstock was acknowledged.

\* \* \* \* \*

There being no further business before the Board, the meeting adjourned at 6:31 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair  
Greensboro Board of Adjustment

CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
NOVEMBER 23, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, November 23, 2015 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Patti Eckard, Laura Blackstock, Enyonam Williams, Chuck Truby, Sarah Wood and Deborah Bowers. Planning Department staff were: Loray Averett and Nicole Smith; and Jennifer Schneier, City Attorney's Office.

Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Mr. Truby moved approval of the October 26, 2015 meeting minutes, as submitted, seconded by Ms. Williams. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett and Nicole Smith were sworn in as to their testimony for cases involved in today's meeting.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that there were no continuances or withdrawals.

**OLD BUSINESS**

None.

**NEW BUSINESS**

**1. VARIANCE**

- (a) BOA-15-33: **6 WEDGEWOOD COURT** Dan and Michelle Purnell request a variance from a minimum side setback requirement. **Variance:** A proposed attached garage will encroach 5 feet into a required 10-foot side setback. Section 30-7-3.2 Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Hobbs Road. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed attached two-story garage which will encroach approximately 5-feet into a required 10-foot side setback. The lot is located on the western side of Wedgewood Court south of West Friendly Avenue. Tax records reflect the lot size is approximately 14,374 square feet. The house was originally built in 1985. The applicant is proposing to construct a two-story garage attached to the house, which also a two-story house. The garage is proposed to be constructed 22 feet wide by 30 feet deep for a total of 660 square feet. The existing house is constructed slightly more towards the western side lot line. The area for the garage is proposed on the eastern side of the house. The rear lot line is slightly angled creating a slight angle on the eastern side lot line, which is the area proposed for the attached garage. The lot has an existing driveway and established landscaping. The applicant has mentioned the proposed location and design of the garage will complement the existing architectural style of the existing house. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Dan Purnell, owner of the property, was sworn in and stated that he purchased the home about a year ago and just completed a large remodel on the home which included adding a garage to the property. Every house on the street has a two-car garage so he is trying to obtain additional space for their vehicles and a master bedroom and bathroom above the garage area. The only place on the property to put the proposed garage is at the existing driveway. The driveway currently goes behind the house and widens to the right side of the house, making it suitable for a two-car garage in that location. It appears to have been designed for a two-car garage, but the previous owners never constructed the garage. In looking at the plans for the proposed garage he realized that it would be about 5' off the side property line. He would ask that the Board of Adjustment allow the construction of the proposed two-garage in the most realistic location on the property.

Kevin Reeves, the contractor, J&K Builders, Jamestown, NC, was sworn in and stated that he did part of the remodel on the interior of the home. He has helped the homeowner in designing the proposed two-car garage. He is available to answer any questions by the Board members.

There being no opposition, the public hearing was closed.

### **Board Discussion:**

All the Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property.

Mr. Truby moved that in regard to BOA-15-33, 6 Wedgewood Court, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because not granting the variance would prevent the applicant from building the proposed garage. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the logical placement of the garage is on the side of the house and the width of the proposed

garage dictates the proximity to the side lot line. The hardship results from the application of this Ordinance to the property because the garage would not be wide enough for two cars without encroaching into the side lot line. The hardship is not the result of the applicant's own actions because the house was built in 1985 without a garage. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because adding a garage will add value and appeal to the property and preserves the spirit of the ordinance. The granting of the variance assures the public safety and welfare and does substantial justice because it would not negatively impact the neighborhood and would allow vehicles to be parked inside instead of out in the driveway, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Wood, Hayworth, Blackstock, Williams, Truby, Eckard, Bowers. Nays: None.)

- (b) BOA-15-34: **4702 SWEETBRIAR ROAD** Mauro Ruggieri requests a variance from a minimum front setback requirement. **Variance:** A proposed single-family dwelling will encroach approximately 38 feet into a required average front setback of approximately 88 feet. The proposed dwelling will be setback approximately 50 feet. Section 30-7-1.4(A)1b), Present Zoning-R-3 (Residential Single-family), Cross Street-Old Lake Jeanette Road. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed single family dwelling which will encroach approximately 38 feet into a required average front setback of approximately 88 feet. The proposed dwelling will be setback 50 feet from the front setback line adjacent to Sweetbriar Road. The property is located on the eastern side of Sweetbriar Road north of Old Lake Jeanette Road and is zoned R-3. The lot is rectangular shaped, except for a portion of the rear lot line which is angled and contains approximately 20,545 square feet. There are two house located north of the subject site that may be used in calculating the average setback for the subject lot. The average setback was determined using those two houses on the same block face as the subject site. The house located at 4704 Sweetbriar Road is approximately 73.5 feet from the front property line and the house located at 4706 Sweetbriar Road is approximately 102.3 feet from the front property line. The required average setback for 4702 Sweetbriar Road is approximately 88.0 feet. The applicant is requesting to be allowed to construct his house 50 feet from the front property line instead of the average setback. A County Plat that was recorded in 1966 for Granville Estates reflects the depth of the applicant's lot is averaged at 160 feet. The depth of the lot located at 4704 Sweetbriar is averaged at 187.5 feet and the depth of the lot located at 4706 Sweetbriar Road is averaged at 206 feet. The depth of the applicant's lot is 27 feet shorter than the lot located at 4704 Sweetbriar Road and 46 feet shorter than the lot located at 4706 Sweetbriar Road. So the lots that were used to calculate, those lots have much more depth that the subject property. The County Register of Deeds office reflected that the applicant purchased the property in late 2012. The property was zoned R-3 at the time and the required setback was 30 feet. In April 2014, Council adopted a new infill Ordinance that requires single family homes to use average setbacks rather than the facing setbacks if more than 50% of the lot is on the same side of the street are already developed. The applicable overlays have no impact on setbacks. All the properties located to the north, east, west and south are zoned R-3 and contain single family homes. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.



Chair Hayworth asked if there was anyone wishing to speak on this matter.

Mauro Riggieri, the property owner, was sworn in and stated that he purchased this lot in 2012 and at that time the set back was 30 feet. He was never notified of any change in the Ordinance. He was completely unaware of it until he went to get a building permit a few weeks ago. He has done a survey of the area and the two lots that he used by using the GIS map, shows that other lots in the area have setbacks of approximately 50 - 52 feet. There have been some new homes constructed in the immediate area. He has tried to align the house on his property with the house next door. If he has to go back another 30 + feet, that house would be in front of his house. Also, he would have very little back yard. Because of the shape of the lot, the back line of the lot is on an angle and the house would be pushed back so far that there would be very little room between the back corner of the proposed house and the fence to the rear of the property. These are a hardship for him to be able to use the land for the purpose it is intended. Also, there would be no harm to the general public.

There being no opposition, the public hearing was closed.

### **Board Discussion:**

All the Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property.

Ms. Wood moved that in regard to BOA-15-34, 4702 Sweetbriar Road, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because if the house is moved back it would take up almost all of the rear yard. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because this property is smaller than other properties in the neighborhood. The hardship results from the application of this Ordinance to the property because the property previously had a 30 foot setback. The hardship is not the result of the applicant's own actions because when the property was purchased in 2012, the setback was conveyed to be 30 feet and was then changed in 2014. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because the two lots used in calculation are deeper proportionately. The granting of the variance assures the public safety and welfare and does substantial justice because no harm will come to the public in granting the variance, seconded by Mr. Truby. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Blackstock, Hayworth, Wood, Williams, Truby, Eckard, Bowers. Nays: None.)

- (c) BOA-15-35: **603 HOBBS ROAD** Rhonda and Robert Riggs request a variance from a minimum rear setback requirement. **Variance:** A proposed attached garage with storage area will encroach 6.8 feet into a 30-foot rear setback. Section 30-7-3.2 Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street - West Friendly Avenue. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed attached garage to a single-family dwelling which will encroach 6.8 feet into a 30-foot rear setback. The property is located on the western side of Hobbs Road south of West Friendly Avenue and is zoned R-3,

(Residential Single-family). The property contains a 2.5 story single family dwelling. Property records reflect the house was originally built in 1982. The lot contains approximately 16,988 square feet or equivalent to 0.39 acres. The garage dimensions are proposed to be 30 feet x 33 feet for a total of 990 square feet. The garage will be attached to the rear of the dwelling. The portion of the garage that will encroach is 6 feet by 33 feet which is 198 square feet in area. The applicant has made mention that a portion of the garage will also serve as some storage space. There are no storage buildings located on the property separate from the house. Items identified as Exhibit C were submitted by the applicant. They are notarized support statements from both the properties located adjacent to the subject site's rear lot line. A portion of the structure located behind the rear part of the dwelling is a carport which is currently being used for storage area. The applicant mentioned that this area would be enclosed and be part of the house as renovations for the house are planned. The subject site is heavily landscaped along the rear lot line. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone wishing to speak on this matter.

Robert Riggs, the property owner, 603 Hobbs Road, was sworn in and stated that he would like an enclosed garage for storage purposes and parking vehicles. There has recently been several break-ins in this area and he would like the vehicles and children's toys in an enclosed and safe place. The existing carport is relatively small and there is no room for yard tools and toys, so he is now having to store these things in the crawl space under the house. He has discussed these plans with his neighbors and no one is opposed to the request. The existing carport would be taken down but the roof line area would be used as storage.

Dan Huckabee, 410 Beverly, was sworn in and stated that he has done the drawings for the applicant. He explained the proposed use of the existing carport and garage area. The applicant plans to be live on this property for many years and the proposed plan would allow parking for reasonable residential use on the property.

In response to a question, the applicant stated that they currently back down the driveway to get out onto Hobbs Road.

There being no opposition, the public hearing was closed.

### **Board Discussion:**

All the Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property.

Ms. Eckard moved that in regard to BOA-15-35, 603 Hobbs Road, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because if the Ordinance restrictions are strictly applied a detached garage with storage would not be allowed to be built. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because when the house was built in 1982 it was built without a two-car

garage and the placement of the house on the lot made it unlikely to be able to place the garage with added storage anywhere else on the property so it would flow with the existing home and driveway. The hardship results from the application of this Ordinance to the property because based on the existing infrastructure, it would be impossible to place the garage anywhere else on the property. The hardship is not the result of the applicant's own actions because the house was designed and built before the applicant purchased the property and due to the design and shape of the property there is no other good location for the practical use of that property other than what was previously stated. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it will preserve the character of the house and the design will add value to the property and the surrounding neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because there will be no harm to the public and it will increase the value of the home and property values of the neighborhood, seconded by Ms. Blackstock. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Hayworth, Blackstock, Wood, Williams, Truby, Eckard, Bowers. Nays: None.)

**OTHER BUSINESS:** Discussion Concerning Board's Revised Policy Manual

Loray Averett stated that staff and the Legal Department has updated the Board's Policy Manual. The General Statutes changed in October 2013 and text amendments have been made to the Ordinance in keeping with the General Statutes to bring the policies in line with revised state requirements. There was a small amount of cumbersome language that the Legal Staff recommended some changes to for clarification. She explained in detail some of the proposed changes made to the policies. Board members are urged to pass along any changes they may have.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Cummings was acknowledged as excused.

**SPECIAL NOTE:**

Loray Averett stated that the December meeting would be held in the Plaza Level Conference Room as the Zoning Commission would be holding their December meeting in the Council Chambers.

\* \* \* \* \*

There being no further business before the Board, the meeting adjourned at 7:10 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair  
Greensboro Board of Adjustment

CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
DECEMBER 21, 2015**

The regular meeting of the Greensboro Board of Adjustment was held on Monday December 21, 2015 at 5:30 p.m. in the Plaza Level Conference Room of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Patti Eckard, Laura Blackstock, Enyonam Williams, Chuck Truby, Sarah Wood and Deborah Bowers.

Planning Department staff were: Loray Averett and Jennifer Schneier, City Attorney's Office.

Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF MINUTES**

Ms. Eckard moved approval of the November Board of Adjustment minutes, as submitted, seconded by Ms. Blackstock. The Board members voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett was sworn in as to her testimony regarding cases before the Board.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that BOA-15-38 located at 12 Mary Wil Court has been withdrawn by the applicant.

**OLD BUSINESS : NONE**

## NEW BUSINESS

### VARIANCE

- (a) BOA-15-36: **4639 LONG VALLEY ROAD** James W. Provo, Jr. requests a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. **Variance:** The applicant is proposing to have a separate electrical meter for a proposed detached garage/storage building. Section 30-8-11.1(G), Present Zoning-R-3 (Residential Single-family), Cross Street-Pleasant Ridge Road. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on a proposed detached garage/boat storage building. The property is located on the western side of Long Valley Road south of Pleasant Ridge Road and is zoned R-3 (Residential Single Family). Tax records indicate the lot contains approximately 3.85 acres. The house was constructed in 1984. The property contains a one-story dwelling. The applicant is proposing to construct a one-story detached garage/boat storage building. The proposed dimensions are 30 feet by 30 feet for a total of 900 square feet. The property is developed with infrastructure consisting of the home, concrete driveway, heavy landscaping and trees. The house and areas of landscaping are located approximately 125 feet north of the proposed location for the detached building. The survey indicates the property has approximately 900 feet of road frontage abutting Long Valley Road. The design of the lot is unique in shape. The depth is approximately four times greater than the width. The property has two driveway locations from the Long Valley Road right-of-way. The house is built with the front facing north instead of towards the road. The proposed building will be built in line or behind the front building line of the existing house. Due to massive amounts of landscaping and trees, the building will likely not be viewed from the road. The applicant has mentioned that the power supply location for the proposed building has not been finalized. He mentioned that he and Duke Energy have had conversation about a power supply closer to Long Valley Road and the other option was to use the existing supply located north of the proposed building location as shown in the exhibit picture. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if there was anyone present wishing to speak to this matter.

James Provo, the applicant, was sworn in and stated that this property used to be in the County but is now within the City limits. He is constructing an accessory building at the rear of his property for storage of a boat and other items. To be able to do so, he would need to install power to the proposed building from a power pole that is closer to the proposed building, rather than coming from the electric power going to the original house. He referred to a plot plan that showed the placement of the house and the proposed utility building on the property. He currently has several items in the existing garage that would be moved to the proposed utility building, including a boat that is now covered with a tarp and is considered unsightly. In speaking with Duke Energy, they have suggested the proposed location of the power to the building. The power lines would be placed under ground and this would be the best option.

### **Board Discussion**

All Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property.

Ms. Williams moved that in regard to BOA-15-36, 4639 Long Valley Road, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because utility service would only be provided by branching service from the principal building which would prevent building the proposed garage without a long power line connecting the two buildings. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because elevation changes exist along the long and narrow lot shape that would require a power line to run through a landscaped area. The hardship results from the application of this Ordinance to the property because he did not create the lot shape and plans for the building did not exist when he bought the lot. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the homeowner will be able to use his property to the highest and best use and obtain needed storage, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Hayworth, Blackstock, Williams, Truby, Eckard, Wood and Bowers. Nays: None.)

- (b) BOA-15-37: **5529 WEST MARKET STREET** BRC Greensboro Retail, LLC, Owner, and Susan Cooke, Applicant request a variance from the minimum spacing requirement that a bar establishment located on a tract less than 5 acres must maintain from residentially zoned property. **Variance:** The proposed bar establishment will be zero feet from the nearest residentially zoned property and 100 feet from residentially zoned property located on the north side of West Market Street, when no such establishment may be located within two hundred feet of residentially zoned property. Section 30-8-10.4(F), Present Zoning C-M (Commercial-Medium), Cross Street- Meadowood Street. **(GRANTED)**

Loray Averett stated that the applicant requests a variance from the minimum spacing requirement that a bar establishment located on a tract less than 5 acres must maintain from residentially zoned property. The proposed bar establishment will be located on property that is zero feet from the nearest residentially zoned property, when no such establishment may be located within 200 feet of residentially zoned property; Thus the applicant is requesting a variance for zero separation from the residentially zoned property which is located south of the subject site. The subject site is located on the south side of West Market Street, east of Meadowood Street and is zoned C-M (Commercial-Medium). Bars are a permitted use in the C-M zoning district provided they meet the referenced standards. The property functions as a shopping center with various retail and personal use services. The Guilford County tax record indicates the property consists of 4.60 acres. Tax records reflect the shopping center was constructed in 1986. The applicant is proposing to lease the most eastern unit of the building for bar use. City records reflect the applicant currently operates a bar at 5716 West Market Street and has been at this location since 2012. The current location is in compliance with the LDO use standards. A bar that is located on tracts less than 5 acres is required to meet specific ordinance standards. The property containing the proposed bar use is required to be 200 feet from residentially zoned property. As the records reflect, there is residential property adjacent to the south of the subject site. This property contains multi-family dwelling units. There is also residential zoning, containing multi-family dwelling units located across West Market Street on the north side. The spacing requirements are measured from the property line to the property line. The subject site has driveway accesses from West Market Street. The parking spaces are located in front of and around the building on all sides. There are minimal parking spaces along the area that abuts the residential zoning. These spaces also exceed the 30-foot spacing requirement from the adjoining residential property line. Exhibit 5 shows there is a railroad easement along with a 50-foot drainage easement located on the rear of the subject site. The property is also heavily landscaped. If the variance is granted, the property will be reviewed to comply with the additional standards concerning frontage, screening and parking as noted in the development standards. Primarily, it is intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks.

Chair Hayworth asked if there was anyone present wishing to speak to this matter.

Susan Cooke, the applicant, was sworn in and stated that the business is currently located at 5716 West Market Street. In the very near future, West Market Street will be widened and they will lose their present location due to that street widening effort. They now plan to move to the requested location, but there is residential zoning to the rear of the property. If you measure from building line to building line, they would be allowed, but because they must measure property lot line to property lot line, that causes the problem. In response to questions posed by the Board members, Ms. Cooke stated that they will have live music from time to time and Friday and Saturday nights will be their busiest times for their facility. During the week, they would only have a small amount of people in the business. This bar establishment is for the older crowd with a lot of golfers that frequent the business. They would like to stay in this area because their customers are used to coming to this location.

In response to a question about occupancy, Counsel Schneier stated that the Fire Marshall determines the occupancy for these types of establishments.

Carol Kersey, the applicant, was sworn in and stated that they think the occupancy in the new location would be about 150 patrons at one time. There is no food served at the bar, but they do have covered dishes from time to time.

### **Board Discussion**

Most of the Board members indicated their support of this request as it appears to be straight forward and a very reasonable request for this particular property.

Mr. Truby moved that in regard to BOA-15-37, 5529 West Market Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: If the applicant complies with the provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because not granting the variance would result in the retail space remaining vacant, which would deprive the owner of lost revenue for that property. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property line goes to the center of the railroad tracks and there is a 100' right-of-way on the tracks which provides a greater buffer than just zero feet. The hardship is not the result of the applicant's own actions because the shopping center is existing and the distances are measured from the property line and not from the building and if the distance was measured from building to residential building then it would be greater than 500'. The tenant is being forced to move due to a road-widening project. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit and assures public safety, welfare and substantial justice because West Market Street is primarily commercial and the bar would be in harmony with the surrounding properties, seconded by Ms. Eckard. The Board voted 6-1 in favor of the motion to grant the variance. (Ayes: Wood, Blackstock, Williams, Truby, Eckard, Bowers. Nays: Hayworth.)

- (c) BOA-15-38: **212 MARY WIL COURT** Cornerstone Investment Properties, LLC requests variances for a proposed single family dwelling. **Variance #1:** A front corner of a proposed dwelling will encroach 4.5 feet into a 31.5 foot average front setback requirement. **Variance #2:** The dwelling will also encroach 13 feet into a 30-foot rear setback requirement. Section 30-7-1.4 and Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Bass Chapel Road. **(WITHDRAWN)**

### **OTHER BUSINESS - Adoption of Board's Rules and Regulations**

Loray Averett stated that at the November meeting there was discussion concerning some small items that needed some clean-up on the Board's Policies in relations to how excused absences would be treated and a typo that needed to be addressed. If there is no other discussion, and the Board approves the corrections, she will send a final copy to all the members.



Mr. Truby moved to approve the revised Rules and Procedures as submitted, seconded by Ms. Williams. The Board voted unanimously in favor of the motion.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Cummings was acknowledged as excused.

Chair Hayworth wished everyone a Merry Christmas and stated she is looking forward to seeing everyone in the New Year.

\* \* \* \* \*

There being no further business before the Board, the meeting adjourned at 6:47 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair

Greensboro Board of Adjustment

CH/jd